



Western Australia

Fire and Emergency Services Act 1998

Compare between:

[21 Sep 2016, 03-c0-01] and [16 Sep 2017, 03-d0-02]

Western Australia

Fire and Emergency Services Act 1998

An Act to provide for functions relating to the provision and management of emergency services, and for related purposes.

[Long title amended ~~by~~ No. 22 of 2012 s. 4.]

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Fire and Emergency Services Act 1998*¹.

[Section 1 amended ~~by~~ No. 22 of 2012 s. 5.]

2. Commencement

This Act comes into operation on such day as is fixed by proclamation¹.

3. Terms used

In this Act, unless the contrary intention appears —

annual estimate, in relation to expenditure, means an estimate of expenditure for a financial year;

assessment notice means a notice served under section 36J(1) or 36L(2);

assistance operation means an operation to provide assistance to —

- (a) the FES Commissioner; or
- (b) a brigade (as defined in the *Fire Brigades Act 1942*); or
- (c) a bush fire brigade (as defined in the *Bush Fires Act 1954*); or
- (d) an SES Unit; or
- (e) a VMRS Group; or
- (f) the Police Service; or
- (g) any other agency, organisation or body that provides emergency services,

in performing functions relating to emergency services;

consultative committee means a committee appointed by the Minister under section 22;

Crown land has the same meaning as it has in the *Land Administration Act 1997*;

Department means the department of the Public Service principally assisting in the administration of this Act;

emergency services Acts means this Act, the *Bush Fires Act 1954* and the *Fire Brigades Act 1942*;

employed in the Department means employed or engaged in the Department in accordance with section 20(1);

ESL category area means an area of Western Australia that is declared under section 36F(2);

FES activities means —

- (a) the prevention, control and extinguishment of fires;
- (b) the prevention and control of other incidents;
- (c) the provision of emergency services in relation to incidents;
- (d) the protection and saving of life and property endangered by incidents;
- (e) the promotion of the safety of life and property from incidents;
- (f) the rendering safe of the sites of incidents;
- (g) the carrying out of —
 - (i) rescue operations;
 - (ii) search and rescue operations;
 - (iii) marine search and rescue operations;
 - (iv) assistance operations;
 - (v) monitoring activities;

FES Commissioner means the Fire and Emergency Services Commissioner;

FES Unit means a group of persons approved by the FES Commissioner under section 18M;

Fire and Emergency Services Commissioner means the chief executive officer of the Department;

gross rental value, in relation to land, has the same meaning as it has in the *Valuation of Land Act 1978*;

hazardous material incident means an actual or impending spillage or other escape of anything the spillage or escape of which causes or threatens to cause injury or death, or damage to property or to the environment;

incident means —

- (a) a fire; or
- (b) a hazardous material incident; or
- (c) a natural disaster; or
- (d) an accident or other event that may require the carrying out of —
 - (i) a rescue operation;
 - (ii) a search and rescue operation;
 - (iii) a marine search and rescue operation;
 - (iv) an assistance operation;
 - (v) a monitoring activity;

leviable land means land on which the levy is payable;

levy means the emergency services levy determined under Part 6A and imposed under the *Emergency Services Levy Act 2002*;

levy interest means interest that has accrued on the levy under section 36S;

levy year, in relation to the payment of the levy, means the financial year for which the levy is payable;

marine search and rescue operation means a search and rescue operation that is carried out at sea or in, on or around any body of water;

member of staff means the FES Commissioner or a public service officer or other person employed in the Department;

monitoring activity means an activity carried out for the purpose of finding out about the occurrence of events that might result in a marine search and rescue operation being required

(such as monitoring marine radio frequencies or keeping watch for distress flares or signals);

natural disaster means a flood, cyclone or other storm, earthquake, tsunami or other prescribed event;

operating account of the Department means an agency special purpose account established for the purposes of the operations of the Department under the *Financial Management Act 2006* section 16(1)(a);

owner, in relation to land, has the meaning given in section 3A;

rescue operation means an operation to rescue or recover a person or property endangered as a result of an accident, explosion or other similar event;

search and rescue operation means an operation to search for, and if necessary rescue or recover, a person or property who or which is lost or endangered as a result of a natural disaster, accident or other event;

SES Unit means a group of persons approved by the FES Commissioner under section 18C;

VMRS Group means a group of persons approved by the FES Commissioner under section 18H.

[Section 3 amended ~~by~~ No. 38 of 2002 s. 4; No. 42 of 2002 s. 4; No. 22 of 2012 s. 6 and 43.]

3A. Term used: owner

In this Act —

owner —

(a) in relation to Crown land, means —

- (i) a lessee of the land or another person with a right to occupy the land otherwise than as an owner according to paragraph (b) or (c); or
- (ii) a person with a right to acquire by purchase or otherwise the fee simple of the land;

or

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- (b) in relation to Crown land that does not have an owner according to paragraph (a) and that —
 - (i) is vested in a person; or
 - (ii) is dedicated to a purpose of a person; or
 - (iii) is placed under the control of a person, means that person or, if applicable, the management body within the meaning of the *Land Administration Act 1997* for the land; or
- (c) in relation to Crown land that does not have an owner according to paragraph (a) or (b), means the State; or
- (d) in relation to freehold land that is under the operation of the *Transfer of Land Act 1893*, means a proprietor within the meaning of that Act, except a mortgagee who is not a mortgagee in possession of the land; or
- (e) in relation to land that is subject to the *Registration of Deeds Act 1856*, means the holder of an interest registered by memorial under that Act, except a mortgagee who is not a mortgagee in possession of the land; or
- (f) means a person who —
 - (i) under the *Mining Act 1978*, holds in respect of the land a mining tenement within the meaning of that Act; or
 - (ii) in accordance with the *Mining Act 1978*, holds, occupies, uses, or enjoys in respect of the land a mining tenement within the meaning of the *Mining Act 1904*²; or
 - (iii) under the *Petroleum and Geothermal Energy Resources Act 1967*, holds in respect of the land a permit, drilling reservation, lease or licence within the meaning of that Act.

[Section 3A inserted ~~by~~ No. 42 of 2002 s. 5; amended ~~by~~ No. 35 of 2007 s. 93.]

3B. Act binds Crown

This Act binds the Crown.

[Section 3B inserted ~~by~~ No. 42 of 2002 s. 5.]

Part 2 — Administration

[Heading inserted-by: No. 22 of 2012 s. 7.]

Division 1 — The Minister

[Heading inserted-by: No. 22 of 2012 s. 7.]

4. Term used: FES Ministerial Body

In this Division —

FES Ministerial Body means the body corporate of that name established by section 5.

[Section 4 inserted-by: No. 22 of 2012 s. 7.]

5. FES Ministerial Body, nature of etc.

- (1) The FES Ministerial Body is established.
- (2) The FES Ministerial Body is a body corporate with perpetual succession.
- (3) Proceedings may be taken by or against the FES Ministerial Body in its corporate name.
- (4) The FES Ministerial Body is to be governed by the Minister.
- (5) The FES Ministerial Body has the status, immunities and privileges of the Crown.

[Section 5 inserted-by: No. 22 of 2012 s. 7.]

6. FES Ministerial Body, purpose and effect of acts of etc.

- (1) The FES Ministerial Body is established to provide a body corporate through which the Minister can perform any of the Minister's functions under the emergency services Acts that can more conveniently be performed by a body corporate than an individual.

- (2) Any acts or things done through the FES Ministerial Body as described in subsection (1) are to be regarded as —
 - (a) services under the control of the Department for the purposes of the *Financial Management Act 2006* section 52; and
 - (b) operations of the Department for the purposes of Part 5 of that Act.
- (3) Despite the employment under the *Public Sector Management Act 1994* of ministerial officers for the purpose of assisting the Minister to perform functions that the Minister performs through the FES Ministerial Body, the FES Ministerial Body and those officers are not an organisation for the purposes of that Act.

[Section 6 inserted ~~by~~ No. 22 of 2012 s. 7.]

7. FES Ministerial Body, execution of documents by

- (1) The FES Ministerial Body is to have a common seal.
- (2) A document is duly executed by the FES Ministerial Body if —
 - (a) the common seal of the FES Ministerial Body is affixed to it in accordance with subsections (3) and (4); or
 - (b) it is signed on behalf of the FES Ministerial Body by the Minister; or
 - (c) it is signed on behalf of the FES Ministerial Body, as authorised under subsection (5), by the FES Commissioner or another person.
- (3) The common seal of the FES Ministerial Body is not to be affixed to a document except as authorised by the FES Ministerial Body.
- (4) The common seal of the FES Ministerial Body is to be affixed to a document in the presence of the Minister, and the Minister is to sign the document to attest that the common seal was so affixed.

- (5) The FES Ministerial Body may, by writing under its seal, authorise the FES Commissioner or another person to execute deeds or other documents on behalf of the FES Ministerial Body, either generally or subject to any conditions or restrictions specified in the authorisation.
- (6) A document purporting to be executed in accordance with this section is to be presumed to be duly executed until the contrary is shown.
- (7) A document executed by the FES Commissioner or another person under this section without the common seal of the FES Ministerial Body is not to be regarded as a deed unless it is executed as a deed as authorised under subsection (5).
- (8) When a document is produced bearing a seal purporting to be the common seal of the FES Ministerial Body, it is to be presumed that the seal is the common seal of the FES Ministerial Body until the contrary is shown.
- (9) For the purposes of this Act, a facsimile of —
 - (a) the FES Ministerial Body's seal; or
 - (b) the signature of the Minister or a person authorised under subsection (5) to execute deeds or other documents,

may be used, and a deed or other document purporting to be endorsed with such a facsimile is, until the contrary is shown, to be regarded as bearing the facsimile under this subsection.

[Section 7 inserted ~~by~~: No. 22 of 2012 s. 7.]

8. Minister's powers to acquire etc. property

- (1) In this section —

acquire includes taking on lease or licence or in any other manner in which property may be acquired;

dispose of includes disposing of by way of lease or licence or in any other manner in which property may be disposed of.

- (2) For the purposes of the emergency services Acts the Minister may —
- (a) acquire, hold, manage, improve, develop, dispose of, and otherwise deal in, real and personal property; and
 - (b) develop and turn to account any technology, software or other intellectual property that relates to the purposes of the emergency services Acts and, for those purposes, apply for, hold, exploit and dispose of any patent, patent rights, copyright or similar rights.
- (3) The proceeds of —
- (a) the disposal of any real or personal property; or
 - (b) anything else done by the Minister under subsection (2),
- are to be credited to an operating account of the Department.

[Section 8 inserted ~~by~~ No. 22 of 2012 s. 7.]

9. Minister's power to borrow money

- (1) The Minister may, if the Treasurer approves, borrow sums of money from the Western Australian Treasury Corporation, or as otherwise approved by the Treasurer, for the purposes of the emergency services Acts.
- (2) All sums borrowed under subsection (1) are to be credited to an operating account of the Department.

[Section 9 inserted ~~by~~ No. 22 of 2012 s. 7.]

[10. Deleted ~~by~~ No. 22 of 2012 s. 7.]

Division 2 — The FES Commissioner

[Heading inserted ~~by~~ No. 22 of 2012 s. 8.]

11. Functions

- (1) Subject to the control of the Minister, the FES Commissioner is responsible for the provision and management of emergency

services in accordance with the functions given to the FES Commissioner by or under the emergency services Acts.

- (2) The FES Commissioner has the functions of —
 - (a) advising the Minister on all aspects of policy in relation to emergency services;
 - (b) developing plans for, and providing advice on, the management and use of emergency services;
 - (c) undertaking, coordinating, managing and providing practical and financial assistance to activities and projects relating to emergency services.
- (3) Nothing in this section or another provision of the emergency services Acts limits the functions of the FES Commissioner as a chief executive officer under the *Public Sector Management Act 1994*.

[Section 11 amended ~~by~~ No. 38 of 2002 s. 7; No. 22 of 2012 s. 9.]

12. Powers

- (1) The FES Commissioner may do all things necessary or convenient to be done for or in connection with the performance of the FES Commissioner's functions.
- (2) Without limiting subsection (1) or any other power conferred on the FES Commissioner by the emergency services Acts, the FES Commissioner may —
 - [(a) deleted]*
 - (b) produce and publish information on matters related to the FES Commissioner's functions; and
 - (c) require payment of rent, fees or other charges for the use of any of the Department's facilities or services; and
 - (ca) make such charges as the FES Commissioner determines for anything done by the FES Commissioner in the performance of the FES Commissioner's functions under section 26A of the *Fire Brigades Act 1942*; and

- (d) fix the amount of rent, fees or other charges referred to in paragraph (c) or (ca) and may reduce or refund the amount payable in particular cases; and
 - (e) enter into a contract or arrangement on behalf of the State with a person or body (including a local government, or a department of the Public Service or other agency or instrumentality of the State or the Commonwealth) —
 - (i) for the performance by that person or body of any work or the supply of equipment or services; or
 - (ii) to provide consultancy or advisory services to that person or body;
- and
- (f) act in conjunction with a person, a firm or a local government, or a department of the Public Service or other agency or instrumentality of the State or the Commonwealth.
- (2a) Subsection (2)(c) and (ca) do not apply in relation to any facility, service or other thing in respect of which rent, fees or charges may be prescribed under an emergency services Act.

[(3) deleted]

[Section 12 amended ~~by~~ No. 38 of 2002 s. 8; No. 42 of 2002 s. 6; No. 22 of 2012 s. 10 and 43.]

13. Department, use of operational names by

- (1) For the purposes of the functions performed under the emergency services Acts, the Department may use, and operate under, a name (an ***operational name***) —
 - (a) set out in subsection (2); or
 - (b) approved or amended under subsection (3).

- (2) The following names are operational names —
- (a) Bush Fire Service of Western Australia; and
 - (b) FES Fire and Emergency Services; and
 - (c) FES Fire Services; and
 - (d) Western Australia Fire and Rescue Service; and
 - (e) State Emergency Service; and
 - (f) Volunteer Marine Rescue Services.
- (3) The Minister may by order published in the *Gazette* —
- (a) approve other operational names; or
 - (b) amend, or cancel the use of, an operational name.
- (4) If a group of persons (a **brigade**) is both a bush fire brigade under the *Bush Fires Act 1954* and a volunteer brigade under the *Fire Brigades Act 1942*, the brigade may, with the approval of the FES Commissioner, operate under the name FES Fire Services Brigade or any other name approved by the FES Commissioner.

[Section 13 amended ~~by~~: No. 38 of 2002 s. 9; No. 22 of 2012 s. 11, 43 and 44.]

[14. Deleted ~~by~~: No. 22 of 2012 s. 12.]

Division 3 — Delegation

[Heading inserted ~~by~~: No. 22 of 2012 s. 13.]

15. Delegation by Minister and FES Commissioner

- (1) The Minister may, in writing, delegate to the FES Commissioner the performance of any of the Minister's functions under the emergency services Acts, except the Minister's functions under Part 6A.
- (2A) Without limiting the things that may be delegated under subsection (1), they include things that are to be done in the

course of governing the affairs of the FES Ministerial Body under section 5(4).

- (2) The FES Commissioner may, in writing, delegate —
 - (a) to another member of staff, an advisory committee established under section 24(1) or a public service officer not employed in the Department — the performance of any of the FES Commissioner's functions under the emergency services Acts; and
 - (b) to a member of an SES Unit — any of the FES Commissioner's powers under section 18B; and
 - (c) to a member of a VMRS Group — any of the FES Commissioner's powers under section 18G; and
 - (d) to a member of a FES Unit — any of the FES Commissioner's powers under section 18L.
- (3) Performance by a delegate of a function delegated under subsection (1) or (2) —
 - (a) is taken to be in accordance with the terms of a delegation under this section, unless the contrary is shown; and
 - (b) is to be treated as performance by the delegator.
- (4) Except as provided in section 16 a delegation under this section does not include the power to subdelegate.
- (5) Nothing in this section is to be read as limiting the ability of the FES Commissioner to act through members of staff or agents in the normal course of business.

[Section 15 inserted ~~by~~: No. 38 of 2002 s. 10; amended ~~by~~: No. 42 of 2002 s. 7; No. 22 of 2012 s. 14, 43 and 44.]

16. Subdelegation

- (1) The Minister may, in an instrument by which a function is delegated under section 15(1), authorise the FES Commissioner to subdelegate that function to another member of staff.

- (2) The FES Commissioner may, in an instrument by which a function is delegated under section 15(2)(a) to a member of staff, authorise the member of staff to subdelegate that function to another member of staff.
- (3) A subdelegation under this section must be made in writing.
- (4) Performance by a subdelegate of a function subdelegated under subsection (1) or (2) —
 - (a) is taken to be in accordance with the terms of a subdelegation under this section, unless the contrary is shown; and
 - (b) is to be treated as performance by the delegator who made the original delegation under section 15.
- (5) Sections 58 and 59 of the *Interpretation Act 1984* apply to a subdelegation under this section in the same way as they apply to a delegation.

[Section 16 inserted ~~by~~ No. 38 of 2002 s. 10; amended ~~by~~ No. 22 of 2012 s. 15.]

[17, 18. Deleted ~~by~~ No. 22 of 2012 s. 16.]

Part 3A — State Emergency Service

[Heading inserted-by: No. 38 of 2002 s. 11.]

18A. FES Commissioner's functions under this Part

The functions of the FES Commissioner under this Part are —

- (a) to manage the provision of emergency services in relation to natural disasters; and
- (b) to provide for the carrying out of search and rescue operations; and
- (c) to promote the safety of life and property from natural disasters, accidents and other events that may require search and rescue operations to be carried out; and
- (d) to provide for the carrying out of assistance operations; and
- (e) to have general responsibility for all SES Units.

[Section 18A inserted-by: No. 38 of 2002 s. 11; amended-by: No. 22 of 2012 s. 43.]

18B. FES Commissioner's powers for this Part

- (1) The FES Commissioner may do all things necessary or convenient to be done for or in connection with the performance of the FES Commissioner's functions under this Part.
- (2) Without limiting subsection (1), for the purpose of performing the FES Commissioner's functions under this Part the FES Commissioner may —
 - (a) provide equipment and training to SES Units; and
 - (b) carry out the functions of an SES Unit.
- (3) Without limiting subsection (1), for the purpose of —
 - (a) protecting and saving life and property endangered by a natural disaster; or
 - (b) rendering safe the site of a natural disaster; or
 - (c) carrying out a search and rescue operation; or

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(d) carrying out an assistance operation,

the FES Commissioner may —

- (e) enter any land, building, area of water or other place; and
- (f) take control of or make use of any land, building, vehicle, vessel or other thing; and
- (g) damage or destroy any building, vehicle, vessel or other thing; and
- (h) move any vehicle, vessel or other movable thing; and
- (i) subject to the regulations, disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service; and
- (j) restrict or prohibit the movement of persons and vehicles including, if necessary, by the closure of roads or any area of water.

(4) In exercising a power under subsection (3) the FES Commissioner may use such force as is reasonably necessary.

[Section 18B inserted ~~by~~: No. 38 of 2002 s. 11; amended ~~by~~: No. 42 of 2002 s. 8; No. 22 of 2012 s. 17 and 43.]

18C. SES Units, approval of etc. by FES Commissioner

- (1) The FES Commissioner may, by notice in the *Gazette*, approve as an SES Unit any group of persons, however constituted and whether incorporated or not, that the FES Commissioner considers to be appropriate for approval as an SES Unit.
- (2) The FES Commissioner may, by notice in the *Gazette*, cancel the approval of an SES Unit if the FES Commissioner considers that it is no longer appropriate for the Unit to be approved.
- (3) The FES Commissioner must keep a register of SES Units approved under subsection (1) and their members.

[Section 18C inserted ~~by~~: No. 38 of 2002 s. 11; amended ~~by~~: No. 22 of 2012 s. 18 and 43.]

18D. SES Unit to keep register of its members etc.

An SES Unit must —

- (a) maintain a register of its members in accordance with the regulations; and
- (b) notify the FES Commissioner as soon as practicable after any change occurs in any of the details required by the regulations to be recorded in that register.

[Section 18D inserted ~~by~~ No. 38 of 2002 s. 11; amended ~~by~~ No. 22 of 2012 s. 43.]

18E. SES Unit, functions of

- (1) The functions of an SES Unit are —
 - (a) to take all practicable measures —
 - (i) for protecting and saving life and property endangered by natural disasters; and
 - (ii) for rendering safe the site of natural disasters; and
 - (b) to carry out search and rescue operations; and
 - (c) to promote the safety of life and property from natural disasters, accidents and other events that may require search and rescue operations to be carried out; and
 - (d) to carry out assistance operations.
- (2) For the purposes of performing its functions an SES Unit may —
 - (a) acquire and maintain equipment; and
 - (b) carry out training activities and exercises; and
 - (c) carry out demonstrations and other public education activities; and
 - (d) carry out fundraising and promotional activities; and
 - (e) organise and participate in competitions; and

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- (f) carry out any activities that are reasonably incidental to the performance of its functions (such as travelling, providing communications systems and providing meals); and
- (g) carry out any other activities that are, or are in a class of activities that is, prescribed.

[Section 18E inserted ~~by~~ No. 38 of 2002 s. 11.]

Part 3B — Volunteer Marine Rescue Services

[Heading inserted ~~by~~: No. 38 of 2002 s. 11.]

18F. FES Commissioner's functions under this Part

The functions of the FES Commissioner under this Part are —

- (a) to provide for the carrying out of monitoring activities and marine search and rescue operations; and
- (b) to promote the safety of life and property from natural disasters, accidents and other events that may require marine search and rescue operations to be carried out; and
- (c) to provide for the carrying out of assistance operations; and
- (d) to have general responsibility for all VMRS Groups.

[Section 18F inserted ~~by~~: No. 38 of 2002 s. 11; amended ~~by~~: No. 22 of 2012 s. 43.]

18G. FES Commissioner's powers for this Part

- (1) The FES Commissioner may do all things necessary or convenient to be done for or in connection with the performance of its functions under this Part.
- (2) Without limiting subsection (1), for the purpose of performing the FES Commissioner's functions under this Part the FES Commissioner may —
 - (a) provide equipment and training to VMRS Groups; and
 - (b) carry out the functions of a VMRS Group.
- (3) Without limiting subsection (1), for the purpose of carrying out a marine search and rescue operation or an assistance operation the FES Commissioner may —
 - (a) enter any land, building, area of water or other place; and
 - (b) take control of or make use of any land, area of water, building, vehicle, vessel or other thing; and

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- (c) damage or destroy any building, vehicle, vessel or other thing; and
 - (d) move any vehicle, vessel or other movable thing; and
 - (e) subject to the regulations, disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service; and
 - (f) restrict or prohibit the movement of persons, vehicles and vessels, including, if necessary, by the closure of roads or areas of water.
- (4) In exercising a power under subsection (3) the FES Commissioner may use such force as is reasonably necessary.

[Section 18G inserted-by: No. 38 of 2002 s. 11; amended-by: No. 22 of 2012 s. 19 and 43.]

18H. VMRS Groups, approval of etc. by FES Commissioner

- (1) The FES Commissioner may, by notice in the *Gazette*, approve as a VMRS Group any group of persons, however constituted and whether incorporated or not, that the FES Commissioner considers to be appropriate for approval as a VMRS Group.
- (2) The FES Commissioner may, by notice in the *Gazette*, cancel the approval of a VMRS Group if the FES Commissioner considers that it is no longer appropriate for the Group to be approved.
- (3) The FES Commissioner must keep a register of VMRS Groups approved under subsection (1) and their members.

[Section 18H inserted-by: No. 38 of 2002 s. 11; amended-by: No. 22 of 2012 s. 20 and 43.]

18I. VMRS Group to keep register of its members etc.

A VMRS Group must —

- (a) maintain a register of its members in accordance with the regulations; and

- (b) notify the FES Commissioner as soon as practicable after any change occurs in any of the details required by the regulations to be recorded in that register.

[Section 18I inserted ~~by~~: No. 38 of 2002 s. 11; amended ~~by~~: No. 22 of 2012 s. 43.]

18J. VMRS Group, functions of

- (1) The functions of a VMRS Group are —
 - (a) to carry out monitoring activities and marine search and rescue operations; and
 - (b) to promote the safety of life and property from natural disasters, accidents and other events that may require marine search and rescue operations to be carried out; and
 - (c) to carry out assistance operations.
- (2) For the purposes of performing its functions a VMRS Group may —
 - (a) acquire and maintain equipment; and
 - (b) carry out training activities and exercises; and
 - (c) carry out demonstrations and other public education activities; and
 - (d) carry out fundraising and promotional activities; and
 - (e) organise and participate in competitions; and
 - (f) carry out any activities that are reasonably incidental to the performance of its functions (such as travelling, providing communications systems and providing meals); and
 - (g) carry out any other activities that are, or are in a class of activities that is, prescribed.

[Section 18J inserted ~~by~~: No. 38 of 2002 s. 11.]

Part 3 — FES Units

[Heading inserted-by: No. 22 of 2012 s. 21.]

18K. FES Commissioner's functions under this Part

The functions of the FES Commissioner under this Part are —

- (a) to provide for the performance of FES activities; and
- (b) to have general responsibility for all FES Units.

[Section 18K inserted-by: No. 38 of 2002 s. 11; amended-by: No. 22 of 2012 s. 43 and 44.]

18L. FES Commissioner's powers for this Part

- (1) The FES Commissioner may do all things necessary or convenient to be done for or in connection with the performance of the FES Commissioner's functions under this Part.
- (2) Without limiting subsection (1), for the purpose of performing the FES Commissioner's functions under this Part the FES Commissioner may —
 - (a) perform FES activities; and
 - (b) authorise a FES Unit to perform FES activities; and
 - (c) provide equipment and training to FES Units.
- (3) Without limiting subsection (1), for the purpose of performing FES activities the FES Commissioner may —
 - (a) enter any land, building, area of water or other place; and
 - (b) take control of or make use of any land, area of water, building, vehicle, vessel or other thing; and
 - (c) damage or destroy any building, vehicle, vessel or other thing; and
 - (d) move any vehicle, vessel or other movable thing; and
 - (e) subject to the regulations, disconnect or shut off any electricity, gas, water or fuel supply, or any drainage facility, or any other service; and

- (f) restrict or prohibit the movement of persons and vehicles including, if necessary, by the closure of roads or any area of water.
- (4) In exercising a power under subsection (3) the FES Commissioner may use such force as is reasonably necessary.
- (5) An authorisation under subsection (2)(b) may be made subject to any conditions, qualifications, limitations or exceptions the FES Commissioner considers appropriate.

[Section 18L inserted ~~by~~: No. 38 of 2002 s. 11; amended ~~by~~: No. 22 of 2012 s. 22, 43 and 44.]

18M. FES Units, approval of etc. by FES Commissioner

- (1) The FES Commissioner may, by notice in the *Gazette*, approve as a FES Unit any group of persons, however constituted and whether incorporated or not, that the FES Commissioner considers to be appropriate for approval as a FES Unit.
- (2) The FES Commissioner may, by notice in the *Gazette*, cancel the approval of a FES Unit if the FES Commissioner considers that it is no longer appropriate for the Unit to be approved.
- (3) The FES Commissioner must keep a register of FES Units approved under subsection (1) and their members.

[Section 18M inserted ~~by~~: No. 38 of 2002 s. 11; amended ~~by~~: No. 22 of 2012 s. 23, 43 and 44.]

18N. FES Unit to keep register of its members etc.

A FES Unit must —

- (a) maintain a register of its members in accordance with the regulations; and
- (b) notify the FES Commissioner as soon as practicable after any change occurs in any of the details required by the regulations to be recorded in that register.

[Section 18N inserted ~~by~~: No. 38 of 2002 s. 11; amended ~~by~~: No. 22 of 2012 s. 43 and 44.]

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180. FES Unit, functions of

- (1) The function of a FES Unit is to perform those FES activities that the FES Commissioner authorises the Unit to perform under section 18L(2)(b).
- (2) For the purposes of performing its functions a FES Unit may —
 - (a) acquire and maintain equipment; and
 - (b) carry out training activities and exercises; and
 - (c) carry out demonstrations and other public education activities; and
 - (d) carry out fundraising and promotional activities; and
 - (e) organise and participate in competitions; and
 - (f) carry out any activities that are reasonably incidental to the performance of its functions (such as travelling, providing communications systems and providing meals); and
 - (g) carry out any other activities that are, or are in a class of activities that is, prescribed.

[Section 180 inserted ~~by~~ No. 38 of 2002 s. 11; amended ~~by~~ No. 22 of 2012 s. 43 and 44.]

Part 4A — Bush fire prone areas

[Heading inserted ~~by~~: No. 20 of 2015 s. 4.]

18P. FES Commissioner may designate bush fire prone areas

- (1) The FES Commissioner may, by order published in the *Gazette*, designate an area of the State as a bush fire prone area if satisfied that the area is subject, or likely to be subject, to bush fires.
- (2) The FES Commissioner may, by order published in the *Gazette*, amend or revoke an order published under subsection (1).

[Section 18P inserted ~~by~~: No. 20 of 2015 s. 4.]

Part 4 — Staff

[Heading inserted by: No. 22 of 2012 s. 24.]

19. Terms used

In this Part —

operational staff means persons engaged under section 20(2);

PSMA means the *Public Sector Management Act 1994*.

[Section 19 inserted by: No. 22 of 2012 s. 24.]

20. Classes of staff

(1) For the purposes of the emergency services Acts, persons are to be employed or engaged in the Department —

- (a) as public service officers appointed or made available under the PSMA Part 3; or
- (b) as operational staff; or
- (c) as wages staff.

(2) Operational staff may be engaged —

- (a) as members or officers of a permanent fire brigade as defined in the *Fire Brigades Act 1942* section 4(1); or
- (b) to perform other functions under the emergency services Acts; or
- (c) for the purposes of both paragraphs (a) and (b).

(3) The provisions of the PSMA prevail over the provisions of the emergency services Acts to the extent of any inconsistency in respect of a person who is engaged under subsection (2) and who is a member of the Senior Executive Service as defined in the PSMA section 3(1).

[Section 20 inserted by: No. 22 of 2012 s. 24.]

21. Operational staff and wages staff, engagement and remuneration etc. of

- (1) The PSMA Part 3 does not apply to operational staff or wages staff.
- (2) The powers to engage, transfer, promote and otherwise manage operational staff and wages staff are vested in the FES Commissioner.
- (3) The remuneration of, and other terms and conditions of service of, operational staff and wages staff are not to be less favourable than provided for in —
 - (a) an applicable award, order or industrial agreement under the *Industrial Relations Act 1979*; or
 - (b) the *Minimum Conditions of Employment Act 1993*.
- (4) Operational staff may be engaged —
 - (a) on a full-time or part-time basis; and
 - (b) for an indefinite period as permanent officers or for a period not exceeding 5 years.
- (5) Nothing in this section affects the operation of the *Industrial Relations Act 1979* Part VID.

[Section 21 inserted ~~by~~: No. 22 of 2012 s. 24.]

22. Operational staff, transfer of to another class

- (1) The FES Commissioner may, if he or she considers that it is in the interests of the Department to do so, determine that —
 - (a) a person who is a member of the operational staff is to become an officer of the class mentioned in section 20(1)(a); or
 - (b) a person who has been the subject of a determination under paragraph (a) is again to become a member of the operational staff.

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- (2) A determination under subsection (1) is only to be made with the consent of the person concerned.
- (3) Regulations may be made in respect of the entitlement of persons who are the subject of a determination under subsection (1) to rights and benefits that had accrued or were accruing at the time when the determination took effect.

[Section 22 inserted ~~by~~ No. 22 of 2012 s. 24.]

Part 5 — Advisory committees

[Heading inserted ~~by~~ No. 22 of 2012 s. 24.]

23. Terms used

In this Part —

advisory committee means a committee established under section 24(1);

prescribed association means the association or other body of persons that is prescribed as a body that represents —

- (a) the bush fire brigades under the *Bush Fires Act 1954*; or
- (b) the volunteer brigades under the *Fire Brigades Act 1942*; or
- (c) the SES Units; or
- (d) the VMRS Groups; or
- (e) the FES Units.

[Section 23 inserted ~~by~~ No. 22 of 2012 s. 24.]

24. Advisory committees, establishing etc.

- (1) The Minister may establish committees to provide advice or assistance to the Minister or the FES Commissioner or both of them on matters relevant to the operation or administration of the emergency services Acts.
- (2) Subsection (1) does not authorise the Minister to establish a body corporate.
- (3) An advisory committee is to consist of the people the Minister thinks fit to appoint but, except as stated in section 25(4), at least one member is to be appointed from people nominated by the relevant prescribed association.
- (4) In subsection (3) —
relevant prescribed association means the prescribed association the Minister considers has functions relevant to the

particular duties and responsibilities of the advisory committee concerned.

- (5) An advisory committee is to be established by an instrument signed by the Minister that —
 - (a) identifies the members of the committee and the length and conditions of each of their appointments; and
 - (b) sets out the duties and responsibilities of the committee, including whether the committee is established to provide advice or assistance only to the Minister or only to the FES Commissioner or to both of them; and
 - (c) sets out any other matters in relation to the operation and procedures of the committee the Minister considers appropriate.
- (6) The Minister may, by instrument signed by the Minister, amend or cancel an instrument made under subsection (5).
- (7) Except to the extent that its procedures are set out in the instrument made under subsection (5), an advisory committee may determine its own procedures.
- (8) The members of an advisory committee are entitled to any remuneration and allowances the Minister may from time to time determine on the recommendation of the Public Sector Commissioner.

[Section 24 inserted ~~by~~: No. 22 of 2012 s. 24.]

25. Volunteer advisory committees, establishing etc.

- (1) In this section —

relevant prescribed association means the prescribed association that has functions relevant to the particular duties and responsibilities of the volunteer advisory committee concerned;

volunteer advisory committee means an advisory committee established in accordance with subsection (2).

- (2) Without limiting section 24(1), the Minister must establish at least one advisory committee under that provision in respect of each kind of brigade, unit or group referred to in a paragraph of subsection (3).
- (3) A volunteer advisory committee is to provide advice or assistance to the Minister or the FES Commissioner or both of them on matters relevant to the operation or administration of —
- (a) the bush fire brigades under the *Bush Fires Act 1954*; or
 - (b) the volunteer brigades under the *Fire Brigades Act 1942*; or
 - (c) the SES Units; or
 - (d) the VMRS Groups; or
 - (e) the FES Units,

according to the kind of brigade, unit or group in respect of which the volunteer advisory committee is established.

- (4) A volunteer advisory committee is to consist of the people the Minister thinks fit to appoint, but the majority of the members are to be appointed from people nominated by the relevant prescribed association.

[Section 25 inserted ~~by~~: No. 22 of 2012 s. 24.]

[26-28. Deleted ~~by~~: No. 22 of 2012 s. 24.]

[Part 6 (s. 29-36) deleted ~~by~~: No. 22 of 2012 s. 25.]

Part 6A — Emergency services levy

[Heading inserted ~~by~~ No. 42 of 2002 s. 15.]

Division 1 — Annual estimates of expenditure

[Heading inserted ~~by~~ No. 42 of 2002 s. 15.]

36A. Annual estimate, local government to submit and FES Commissioner to pay etc.

- (1) Subject to subsection (2), a local government is to cause an annual estimate of its expenditure in relation to fire and emergency services to be —
 - (a) prepared in the manner and form approved by the Minister; and
 - (b) submitted for the approval of the FES Commissioner by the time determined by the Minister.
- (2) Subsection (1) does not apply to a local government in relation to a particular year if the Minister gives to the local government written notice that an estimate of its expenditure is not required for that year.
- (3) The FES Commissioner may give the approval referred to in subsection (1)(b) or may reject the estimate and require the local government to prepare and submit an amended estimate for the approval of the FES Commissioner by the time determined by the Minister.
- (4) A local government is to comply with a requirement under subsection (3).
- (5) The FES Commissioner is to pay to a local government, by the time, and in accordance with the procedures, determined by the Minister, an amount equal to the expenditure of the local government approved by the FES Commissioner under this section.

[Section 36A inserted ~~by~~ No. 42 of 2002 s. 15; amended ~~by~~ No. 22 of 2012 s. 43.]

Division 2 — Emergency services levy and ESL category areas

[Heading inserted ~~by~~: No. 42 of 2002 s. 15.]

36B. Annual levy on land in ESL category area

Except as otherwise provided in this Part, the levy is payable each year to the FES Commissioner on all land that is located in an ESL category area.

[Section 36B inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

36C. Leviable land, FES to compile records of annually

The FES Commissioner is to ensure that, for each levy year, a record is compiled, at the time and in the manner approved by the Minister, of all leviable land.

[Section 36C inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

36D. Exemptions from levy, regulations as to

The regulations may —

- (a) provide for kinds of land that are exempt or partially exempt from the levy; and
- (b) specify conditions to which an exemption, or partial exemption, from the levy is subject.

[Section 36D inserted ~~by~~: No. 42 of 2002 s. 15.]

36E. Exemptions in other enactments do not apply

- (1) An enactment passed before the commencement of this section that purports to exempt a person from liability to pay any rate, tax or imposition that could be taken to include the levy does not exempt the person from liability to pay the levy.

- (2) An enactment passed after the commencement of this section that purports to exempt a person from liability to pay —
- (a) all rates, taxes or impositions under the laws of Western Australia; or
 - (b) certain rates, taxes or impositions that could be taken to include the levy,

does not exempt the person from liability to pay the levy.

- (3) Subsection (2) does not apply to an enactment that expressly exempts a person from liability to pay the levy.

[Section 36E inserted ~~by~~: No. 42 of 2002 s. 15.]

36F. ESL category areas, declaration of etc.

- (1) For the purposes of subsection (2), the regulations may prescribe different emergency services categories for different kinds of services that are provided under the emergency services Acts.
- (2) Having regard to the services that are provided under the emergency services Acts in an area of Western Australia, the Minister may, by notice published in the *Gazette* —
- (a) declare that the area is in a prescribed emergency services category; or
 - (b) declare that the area to which a declaration under paragraph (a) applies is in a different prescribed emergency services category; or
 - (c) revoke a declaration under this subsection.
- (3) A notice under subsection (2) cannot have effect in respect of the levy year in which the notice is published.
- (4) Before a notice is published under subsection (2) in relation to an area of Western Australia, the Minister is to consult with each local government whose local government district is, or is proposed to be, located in that area.

[Section 36F inserted ~~by~~: No. 42 of 2002 s. 15.]

Division 3 — Determination and assessment of levy

[Heading inserted ~~by~~ No. 42 of 2002 s. 15.]

36G. Minister to determine levy each year; method to be used

- (1) Before the relevant day each year, the Minister, by notice published in the *Gazette*, is to determine the emergency services levy that is payable for the next levy year on all land that is located in an ESL category area.
- (2) In subsection (1) —
relevant day means —
 - (a) a day declared by the Minister by notice published in the *Gazette* after consultation with persons who the Minister believes effectively represent the interests of local governments; or
 - (b) if no day is declared under paragraph (a), 31 May.
- (3) The Minister is to determine the levy that is payable for a levy year on land by reference to —
 - (a) the estimate of expenditure for the levy year approved by the Minister under section 35B, from which is to be deducted for the purposes of the determination —
 - (i) the amount of that expenditure identified under section 35B(2)(a); and
 - (ii) moneys appropriated by Parliament for the levy year for the purposes of the services provided under the emergency services Acts;
 - and
 - (b) any other matter the Minister considers relevant to a proper determination of the levy.
- (4) Different rates of levy may be determined under subsection (3) according to either or both of the following —
 - (a) the ESL category area in which the land is located;
 - (b) the purpose for which the land is used.

- (5) In determining the purpose for which any land is used for subsection (4)(b) or section 36I(2)(b), the Minister is to have regard to the advice of the Valuer-General and to any matters prescribed by the regulations.

[Section 36G inserted ~~by~~: No. 42 of 2002 s. 15.]

36H. Levy to be determined by reference to gross rental value etc.

- (1) Except as otherwise provided in this section and section 36I, the levy payable for a levy year on land is to be determined as a rate in the dollar of the gross rental value of the land in force under the *Valuation of Land Act 1978* as at 1 July in the levy year.
- (2) If during a levy year the gross rental value of land in force under the *Valuation of Land Act 1978* as at 1 July in that year is amended as at that date as a result of —
- (a) an interim valuation made under that Act; or
 - (b) a valuation coming into force under that Act as a result of the amendment of a valuation under that Act; or
 - (c) a new valuation made under that Act in the course of completing a general valuation that has previously come into force,

the gross rental value, as so amended and in force as at 1 July, is the gross rental value of the land for the purposes of subsection (1).

- (3) If, after the required consultation, the Minister considers that it is impracticable or otherwise inappropriate for the levy to be determined as a rate in the dollar of the gross rental value of any land, the Minister may determine the levy —
- (a) as a rate in the dollar of the gross rental value of a portion of the land; or
 - (b) on any other basis that, after the required consultation, the Minister considers appropriate.

- (4) In subsection (3) —

required consultation, in relation to land, means consultation with the Valuer-General and with the local government for the district in which the land is located.

[Section 36H inserted ~~by~~: No. 42 of 2002 s. 15.]

36I. Minimum and maximum levy, Minister may determine

- (1) Despite any other provision of this Part, the Minister may determine —
- (a) the minimum amount of levy payable on land; and
 - (b) the maximum amount of levy payable on land.
- (2) Different amounts may be determined under subsection (1) according to either or both of the following —
- (a) the ESL category area in which the land is located;
 - (b) the purpose for which the land is used.

[Section 36I inserted ~~by~~: No. 42 of 2002 s. 15.]

36J. Assessment of levy and assessment notices, local government's duties as to

- (1) Subject to sections 36L and 36N, a local government is to —
- (a) assess the amount of levy payable for a levy year by each person who owns leviable land in its local government district; and
 - (b) serve written notice of the assessment on the person.
- (2) The assessment notice is to —
- (a) state the date the notice was issued and, if section 36G(4)(b) or 36I(2)(b) applies to the determination of the levy payable on the land, the purpose for which the land is used as determined under section 36G(5); and
 - (b) include or be accompanied by any matters prescribed by the regulations.

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- (3) If leviable land is owned by 2 or more persons, service of the assessment notice on one of those persons is taken to be service of the notice on each of them.
- (4) The assessment notice is to be given by a local government —
 - (a) as part of the rate notice given under section 6.41 of the *Local Government Act 1995*; or
 - (b) if no rate notice is to be given — as a separate notice.
- (5) Without limiting sections 75 and 76 of the *Interpretation Act 1984*, an assessment notice is taken to have been served on the owner of land if it is posted to the address shown for the owner, at the time of posting, in the rate record kept by the local government under section 6.39 of the *Local Government Act 1995*.

[Section 36J inserted ~~by~~: No. 42 of 2002 s. 15.]

36K. FES Commissioner to ensure local governments have information

The FES Commissioner is to ensure that a local government is given any information relating to the levy and leviable land that the local government reasonably needs to perform its functions under section 36J.

[Section 36K inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

36L. Levy on land owned by State etc., local governments and other persons, assessment of

- (1) The FES Commissioner —
 - (a) except as provided in the regulations, is to assess the amount of levy payable for a levy year on land owned by the State, a State agency or instrumentality or a local government; and
 - (b) may assess the amount of levy payable for a levy year on land owned by any other person.

- (2) The FES Commissioner is to serve written notice of the assessment on —
- (a) in the case of levy payable by the State — the Treasurer; or
 - (b) in the case of levy payable by a State agency or instrumentality — the Treasurer or the agency or instrumentality, as the FES Commissioner considers appropriate; or
 - (c) in the case of levy payable by a local government or another person — the local government or other person.
- (3) Subsections (2), (3) and (5) of section 36J apply to an assessment notice under this section in the same way as they apply to an assessment notice under that section.

[Section 36L inserted-by: No. 42 of 2002 s. 15; amended-by: No. 22 of 2012 s. 43.]

36M. When levy is due and payable

- (1) The levy becomes due and payable on the date determined by the Minister and stated in the assessment notice subject to —
- (a) subsection (2); and
 - (b) any concession granted under section 36R(1)(b); and
 - (c) any agreement made under section 36R(2); and
 - (d) the *Rates and Charges (Rebates and Deferments) Act 1992*.
- (2) The date determined under subsection (1) must not be earlier than 35 days after the date stated in the assessment notice as the date the assessment notice was issued.

[Section 36M inserted-by: No. 42 of 2002 s. 15.]

36N. Levy on land owned by State etc., notice of etc.

Despite any other provision of this Part, the FES Commissioner may give notice of the assessment of, and may accept payment

of, the levy payable on any land owned by the State, or a State agency or instrumentality, in accordance with arrangements agreed between the Treasurer and the FES Commissioner.

[Section 36N inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

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[Heading inserted ~~by~~: No. 42 of 2002 s. 15.]

36O. Levy is a charge on land

Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, the levy, together with any costs of proceedings for the recovery of the levy and any levy interest, is a charge on the leviable land.

[Section 36O inserted ~~by~~: No. 42 of 2002 s. 15.]

36P. Who is liable to pay levy; payment of levy

- (1) A person who is the owner of leviable land is liable to pay the levy for a levy year.
- (2) The levy is payable —
 - (a) if an assessment notice is served on the person by a local government under section 36J(1) — to the local government; or
 - (b) if an assessment notice is served on the person by the FES Commissioner under section 36L(2) — to the FES Commissioner.
- (3) If leviable land is owned by 2 or more persons, they are jointly and severally liable to pay the levy.

[Section 36P inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

36Q. Levy to be paid by one payment; Minister may approve instalments etc.

- (1) Subject to subsection (2), the levy is payable by a single payment.
- (2) The Minister may approve —
 - (a) arrangements for the levy to be paid by instalments; and
 - (b) the charges applicable to payment of the levy by instalments.

[Section 36Q inserted-by: No. 42 of 2002 s. 15.]

36R. Discounts, concessions etc., granting

- (1) Without limiting the *Rates and Charges (Rebates and Deferments) Act 1992*, the Minister may —
 - (a) when determining the levy, grant a discount or other incentive for the early payment of the levy; or
 - (b) when determining the levy or at a later date, waive the levy or grant other concessions in relation to the levy.
- (2) A local government may accept payment of the levy that is due and payable by a person in accordance with an agreement made between the local government and the person.

[Section 36R inserted-by: No. 42 of 2002 s. 15.]

36S. Unpaid levy, interest on

- (1) Subject to subsection (5), interest accrues on the levy, or an instalment of the levy, that is not paid to a local government or the FES Commissioner, as the case requires, from the time it becomes due and payable.
- (2) For the purposes of this section, the Minister may, by notice published in the *Gazette* —
 - (a) declare a rate of interest that applies to any unpaid levy, or to any unpaid levy on land in one or more local government districts, as specified in the notice; or
 - (b) change or revoke a rate of interest declared under paragraph (a).

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- (3) Different rates of interest may be declared under subsection (2) in relation to different local government districts.
- (4) For the purpose of its recovery, levy interest is taken to be an amount of levy that is due and payable.
- (5) No interest is to accrue on the levy, or an instalment of the levy, payable by —
 - (a) a person entitled under the *Rates and Charges (Rebates and Deferments) Act 1992* to a rebate or deferment in respect of the levy; or
 - (b) a person of a kind prescribed by the regulations.

[Section 36S inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

36T. Levy, apportioning etc.

- (1) The levy payable for a levy year on land —
 - (a) is apportionable between successive owners of the land in respect of time as if the levy accrued from day to day during the levy year; and
 - (b) is apportionable between owners of several portions of the land according to the respective values of the portions.
- (2) If any part of the levy payable on any land has been paid by a person other than the owner of the land, whether during or after the levy year, the owner is liable, if there is no agreement between them to the contrary, to reimburse that person the amount paid.
- (3) This section does not affect the liability of a person to pay the levy to a local government or to the FES Commissioner.
- (4) An unsatisfied judgment or order of a court for the recovery of the levy from a person is not a bar to the recovery of the levy from another person liable under this Part to pay it.

[Section 36T inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

36UA. Levy etc. paid to FES Commissioner, how to be dealt with

Any levy or levy interest paid to the FES Commissioner under this Part is to be credited to an operating account of the Department.

[Section 36UA inserted-by: No. 22 of 2012 s. 26.]

Division 5 — Local governments

[Heading inserted-by: No. 42 of 2002 s. 15.]

36U. Levy etc. paid to local government, how to be dealt with

- (1) A local government may credit to its municipal fund or trust fund amounts of levy and levy interest paid to the local government.
- (2) Despite section 6.9(3) of the *Local Government Act 1995*, a local government may retain interest earned from investing amounts of levy and levy interest credited to its trust fund.

[Section 36U inserted-by: No. 42 of 2002 s. 15; amended-by: No. 8 of 2009 s. 57.]

36V. Local government to pay levy etc. to FES Commissioner

A local government is to pay to the FES Commissioner at the times, and in accordance with the procedures, determined by the Minister after consultation with the local government —

- (a) the amounts of levy and levy interest paid to the local government; and
- (b) the amount of levy payable by the local government on any leviable land it owns.

[Section 36V inserted-by: No. 42 of 2002 s. 15; amended-by: No. 22 of 2012 s. 43.]

36W. Local governments to be paid certain fees

- (1) The Minister is to determine —
 - (a) the fees to be paid by the FES Commissioner to a local government for the local government's performance of functions under this Part in relation to the assessment, collection and recovery of the levy and levy interest; and
 - (b) times and procedures for the payment of those fees.
- (2) In making a determination under subsection (1), the Minister may —
 - (a) have regard to the costs reasonably incurred by the local government in making any administrative or other preparations necessary to perform the functions referred to in subsection (1)(a); and
 - (b) consult with persons who the Minister believes effectively represent the interests of local governments.

[Section 36W inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

36X. Amounts unpaid under s. 36V, interest on

- (1) Interest accrues on an amount of levy or levy interest that is received by a local government and not paid to the FES Commissioner from the time it becomes due and payable as determined under section 36V.
- (2) For the purposes of this section, the Minister may, by notice published in the *Gazette* —
 - (a) declare a rate of interest that applies to any unpaid amount of levy or levy interest; or
 - (b) change or revoke a rate of interest declared under paragraph (a).
- (3) An unpaid amount of levy or levy interest, and interest payable on that amount, may be recovered by the FES Commissioner

from a local government in a court of competent jurisdiction as a debt due to the State.

[Section 36X inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 27 and 43.]

36Y. Ministerial guidelines for this Part, issue of etc.

- (1) The Minister may, for the assistance of the FES Commissioner and local governments, issue guidelines, not inconsistent with this Part, setting out the times and procedures that are determined by the Minister for the purposes of this Part.
- (2) The Minister may amend the guidelines or revoke them and issue new guidelines.
- (3) Before the Minister issues or amends guidelines that apply to functions performed by local governments, the Minister is to consult with persons who the Minister believes effectively represent the interests of local governments.
- (4) The Minister is to ensure that guidelines issued or amended under this section are given to the FES Commissioner and to each local government that performs functions to which the guidelines apply.

[Section 36Y inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

Division 6 — Recovery of unpaid levy

[Heading inserted ~~by~~: No. 42 of 2002 s. 15.]

36Z. Unpaid levy etc., recovering etc.

- (1) Subject to the *Rates and Charges (Rebates and Deferments) Act 1992*, the levy that is payable for a levy year on land is recoverable by the local government for the district in which the land is located or by the FES Commissioner from —
 - (a) the owner of the land on the date the assessment notice was served; or

- (b) a person who becomes the owner of the land while the levy is unpaid.
- (2) If the levy remains unpaid after it becomes due and payable, the local government or the FES Commissioner may recover it and any levy interest, as well as any costs of proceedings for that recovery, in a court of competent jurisdiction as a debt due to the local government or the State, as the case requires.
- (3) This section applies —
 - (a) to a local government, if the assessment notice was served by the local government; and
 - (b) to the FES Commissioner, whether the assessment notice was served by the FES Commissioner or by a local government.

[Section 36Z inserted ~~by~~ No. 42 of 2002 s. 15; amended ~~by~~ No. 22 of 2012 s. 28 and 43.]

36ZA. Question of title to land not to affect jurisdiction

A jurisdiction otherwise competent to entertain proceedings to recover the levy, or consequent on the recovery of the levy, or to review a decision relating to the payment of the levy is not affected on the ground that a question of title to land is raised in the proceedings or review, but an order or judgment in the proceedings or review is not evidence of title.

[Section 36ZA inserted ~~by~~ No. 42 of 2002 s. 15; amended ~~by~~ No. 55 of 2004 s. 360.]

Division 7 — Sale of land if levy is unpaid

[Heading inserted ~~by~~ No. 42 of 2002 s. 15.]

36ZB. Term used: levy

In this Division —

levy includes levy interest.

[Section 36ZB inserted ~~by~~ No. 42 of 2002 s. 15.]

36ZC. Land for which levy unpaid for 3 years, sale of

- (1) If an amount of levy that is due and payable on any land has been unpaid for 3 years or more, the FES Commissioner may apply to the Supreme Court for an order for the sale of the land, or part of the land, so that the proceeds of sale may be applied towards satisfaction of the outstanding amount of levy.
- (2) At least 6 months before the FES Commissioner makes an application to the Supreme Court under this section, the FES Commissioner is to —
 - (a) have notice of the intended application published in 2 newspapers —
 - (i) one circulating generally throughout the State; and
 - (ii) one circulating generally throughout Australia; and
 - (b) if the whereabouts of the owner of the land is known to the FES Commissioner — give written notice of the intended application to that person; and
 - (c) give written notice of the intended application to the holder of any registered encumbrance over the land whose whereabouts is known to the FES Commissioner.
- (3) On an application under this section, the Supreme Court may order the sale of the land and make incidental orders —
 - (a) about how the sale is to be conducted; and
 - (b) authorising an officer of the Court to execute documents, and to do anything else necessary, for the sale and transfer or conveyance of the land; and
 - (c) authorising the Registrar of Titles to do anything necessary to register the purchaser's title despite a duplicate certificate of title or other document not being produced; and
 - (d) directing, subject to subsection (4), how the proceeds of sale are to be dealt with; and

- (e) dealing with the costs of the proceedings and other matters.
- (4) A sale by order of the Supreme Court discharges the land from any mortgage or other encumbrance securing a monetary obligation, but the land remains subject to any lease, easement or other encumbrance.
- (5) The proceeds of sale are to be applied —
 - (a) firstly, in payment of the costs of the sale; and
 - (b) secondly, in payment of the costs of the proceedings so far as those costs are, by order of the Court, to be paid out of the proceeds of sale; and
 - (c) thirdly, in payment of the outstanding amount of levy; and
 - (d) fourthly, in discharging any outstanding monetary liability secured, immediately before the sale, by a mortgage or encumbrance referred to in subsection (4),

and any remaining balance is to be applied as directed by the Court.

[Section 36ZC inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 43.]

36ZD. Land for which levy unpaid, caveats on etc.

If the levy that is due and payable on any land is unpaid, the Minister has an interest in the land in respect of which the FES Commissioner may lodge a caveat to preclude dealings in relation to the land, and the FES Commissioner may withdraw a caveat so lodged.

[Section 36ZD inserted ~~by~~: No. 42 of 2002 s. 15; amended ~~by~~: No. 22 of 2012 s. 29.]

Division 8 — Objections and review

[Heading inserted ~~by~~ No. 42 of 2002 s. 15; amended ~~by~~ No. 55 of 2004 s. 361.]

36ZE. Purpose for which land used, objecting to determination of

- (1) If section 36G(4)(b) or 36I(2)(b) applies to the determination of the levy payable on any land, the owner of the land may object to the determination under section 36G(5) of the purpose for which the land is used.
- (2) An objection is to be made to the Minister and is to —
 - (a) be in writing; and
 - (b) identify the leviable land; and
 - (c) set out fully and in detail the grounds of the objection, including particulars of the purpose for which, in the opinion of the person making the objection, the land is used; and
 - (d) be served on the Minister within 60 days after the date the assessment notice was served.
- (3) The Minister may, on an application by a person proposing to make an objection, and whether or not the time for doing so has expired, extend the time for making the objection for any period the Minister thinks fit.
- (4) The Minister is to consider an objection and may determine either to disallow it or allow it.
- (5) After making a determination on the objection, the Minister is to give the person who made the objection written notice of the Minister's determination and a statement of the reasons for that determination.

[Section 36ZE inserted ~~by~~ No. 42 of 2002 s. 15.]

36ZF. Application to SAT for review

A person who is dissatisfied with the determination of the Minister on an objection by the person under section 36ZE may apply to the State Administrative Tribunal for a review of the determination under section 36G(5) of the purpose for which the land is used.

[Section 36ZF inserted ~~by~~ No. 42 of 2002 s. 15; amended ~~by~~ No. 55 of 2004 s. 362.]

[36ZG. Deleted ~~by~~ No. 55 of 2004 s. 363.]

36ZH. Objection does not affect liability to pay levy

- (1) Pending determination of the objection, the liability to pay the levy on any land is not affected by —
 - (a) an objection to the valuation of the land under the *Valuation of Land Act 1978*; or
 - (b) an objection under this Division.
- (2) If an objection referred to in subsection (1) or a review by the State Administrative Tribunal results in an amendment of the valuation of the land or a determination of the purpose for which the land is used that is different from the determination of that purpose that was the subject of the objection or review, the Minister —
 - (a) is to make any necessary adjustment of the levy payable on the land; and
 - (b) is to give written notice of the adjusted levy to the person by whom it is payable.
- (3) If the levy is adjusted —
 - (a) an amount by which, because of its adjustment, the levy was overpaid is to be refunded; and
 - (b) an amount by which, because of its adjustment, the levy was underpaid is recoverable under section 36Z, but no action to recover that amount is to be taken until at least

30 days after the notice referred to in subsection (2) is given to the person by whom the amount is payable; and

- (c) interest accrues on an amount to be refunded under paragraph (a), or recoverable in accordance with paragraph (b), as prescribed by the regulations.

[Section 36ZH inserted-by: No. 42 of 2002 s. 15; amended-by: No. 55 of 2004 s. 364.]

Division 9 — ESL agreements

[Heading inserted-by: No. 42 of 2002 s. 15.]

36ZI. Terms used

In this Division —

ESL agreement means an agreement entered into under section 36ZJ;

leviable land does not include leviable land in relation to which the FES Commissioner serves or gives a notice under section 36L(2) or 36N.

[Section 36ZI inserted-by: No. 42 of 2002 s. 15; amended-by: No. 22 of 2012 s. 43.]

36ZJ. ESL agreement, nature of etc.

- (1) The FES Commissioner may, with the approval of the Minister, enter into a written agreement on behalf of the State with a local government that provides for the local government to pay to the FES Commissioner an amount equal to the total amount of levy payable for a levy year on all leviable land in the local government's district.
- (2) An ESL agreement may provide for the amount that is to be paid to the FES Commissioner under the agreement to be paid by instalments.

- (3) If an amount (including an instalment) remains unpaid after it becomes due and payable under an ESL agreement, the FES Commissioner may recover the amount, and interest on the amount at the rate prescribed by the regulations, as well as any costs of proceedings for that recovery, in a court of competent jurisdiction as a debt due to the State.

[Section 36ZJ inserted ~~by~~ No. 42 of 2002 s. 15; amended ~~by~~ No. 22 of 2012 s. 30 and 43.]

36ZK. Part 6A modified for ESL agreement (Sch. 1A)

If a local government enters into an ESL agreement this Part is to be read, for the purposes of the levy payable on leviable land in the local government's district for the levy year to which the agreement applies, as if the provisions mentioned in column 1 of Schedule 1A were amended or repealed as set out in column 2 of that Schedule.

[Section 36ZK inserted ~~by~~ No. 42 of 2002 s. 15.]

Division 10 — Fees and charges

[Heading inserted ~~by~~ No. 42 of 2002 s. 15.]

36ZL. Emergency services, fees and charges payable for

- (1) Subject to subsection (2), the fees and charges prescribed by the regulations are payable to the FES Commissioner for the provision of services under the emergency services Acts that consist of —
- (a) services provided in respect of land that, under regulations referred to in section 36D, is exempt or partially exempt from the levy; or
 - (b) services provided in respect of a vessel in a port; or
 - (c) services provided in respect of confining or ending a hazardous material incident and rendering the site of the incident safe; or

- (d) an attendance in response to a false alarm by —
 - (i) a permanent fire brigade, or a volunteer fire brigade, within the meaning of the *Fire Brigades Act 1942*; or
 - (ii) a bush fire brigade within the meaning of the *Bush Fires Act 1954*.
- (2) A fee or charge for a service referred to in subsection (1) provided in respect of land is payable —
 - (a) by the owner or occupier of the land; but
 - (b) only if the FES Commissioner serves the owner or occupier with written notice of the fee or charge within 21 days after the service is provided.
- (3) In subsection (2) —
occupier, in relation to land, means the person in or entitled to possession of the land.
- (4) A fee or charge for a service referred to in subsection (1) provided otherwise than in respect of land is payable as prescribed by the regulations.
- (5) A notice under subsection (2) is to —
 - (a) state the date on which the service was provided; and
 - (b) give details of the service provided; and
 - (c) specify when payment of the fee or charge for the service is due and payable.
- (6) A fee or charge payable under this section, notice of which has been given under subsection (2) if that subsection applies, may be recovered by the FES Commissioner in a court of competent jurisdiction as a debt due to the State.

[Section 36ZL inserted ~~by~~ No. 42 of 2002 s. 15; amended ~~by~~ No. 22 of 2012 s. 31 and 43.]

Part 6B — Compensation for injury, loss or damage

[Heading inserted: No. 28 of 2016 s. 7.]

Division 1 — Preliminary

[Heading inserted: No. 28 of 2016 s. 7.]

36ZM. Terms used

In this Part —

appropriate changes, to the WC&IM Act, has the meaning given in section 36ZP;

benchmark weekly earnings, in relation to a volunteer who receives compensation for an injury, means —

- (a) the estimate of the average weekly total earnings of full-time adult employees in Western Australia most recently published by the Australian Bureau of Statistics before the date of injury; or
- (b) if the Australian Bureau of Statistics ceases to publish the estimate of the amount referred to in paragraph (a), the amount fixed by, or determined in accordance with, the regulations;

BFA volunteer means —

- (a) a bush fire control officer appointed under the *Bush Fires Act 1954* section 38; or
- (b) a registered member of a bush fire brigade established under the *Bush Fires Act 1954* section 41;

compensable injury has the meaning given in the WC&IM Act section 159;

date of injury, in relation to a person who has contracted a specified disease, means the earlier of these days —

- (a) the day on which the person becomes totally or partially incapacitated for work by reason of the specified disease;

(b) the day on which the person is first diagnosed by a medical practitioner as having contracted the specified disease;

injury has the meaning given in the WC&IM Act section 5(1);

injury policy means an insurance policy effected for the purposes of section 36ZQ(2);

medical practitioner has the meaning given in the WC&IM Act section 5(1);

Part 6B commencement day means the day on which *Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016* section 7 comes into operation;

registered volunteer means —

(a) a BFA volunteer; or

(b) a registered member of a FES Unit; or

(c) an officer or member of a volunteer fire brigade as defined in the *Fire Brigades Act 1942* section 4(1) whose election or appointment has been approved by the FES Commissioner under section 30 of that Act; or

(d) a registered member of an SES Unit; or

(e) a registered member of a VMRS Group;

responsible agency means —

(a) in relation to a BFA volunteer, the local government which —

(i) appoints the volunteer to be a bush fire control officer; or

(ii) maintains the bush fire brigade of which the volunteer is a registered member,

as the case may be; and

(b) in relation to any other registered volunteer, the FES Commissioner; and

(c) in relation to an unregistered volunteer —

(i) if the unregistered volunteer engages in volunteer activities under the direction of a BFA volunteer, the local government which is the responsible agency for that BFA volunteer; and

(ii) in any other case, the FES Commissioner;

specified disease has the meaning given in the WC&IM Act section 49A;

unregistered volunteer means a person who is not a registered volunteer, but who engages in volunteer activities under the direction of a registered volunteer or a member of operational staff;

vehicle includes a rail vehicle, a vessel, an aircraft and any other thing used as a means of transport;

volunteer means a registered volunteer or an unregistered volunteer;

volunteer activities means —

(a) in relation to a BFA volunteer or an unregistered volunteer working under the direction of a BFA volunteer, normal brigade activities as defined in the *Bush Fires Act 1954* section 35A; and

(b) in relation to any other registered volunteer or an unregistered volunteer working under the direction of such a volunteer, activities carried out by the volunteer unit of which the registered volunteer is an officer or member for the purposes for which that unit was formed; and

(c) in relation to an unregistered volunteer working under the direction of a member of operational staff, FES activities engaged in at the direction of that member;

volunteer unit means —

(a) a bush fire brigade established under the *Bush Fires Act 1954* section 41; or

(b) a FES Unit; or

(c) a volunteer fire brigade within the meaning given in the *Fire Brigades Act 1942* section 4(1); or

(d) an SES Unit; or

(e) a VMRS Group;

WC&IM Act means the *Workers' Compensation and Injury Management Act 1981*.

[Section 36ZM inserted: No. 28 of 2016 s. 7.]

36ZN. When specified disease taken to be injury caused while engaged in volunteer activities

(1) In this section —

FES employment has the meaning given in the *WC&IM Act* section 49A;

firefighting employment has the meaning given in the *WC&IM Act* section 49A;

firefighting service means —

(a) firefighting employment; or

(b) volunteer service;

hazardous fire has the meaning given in the *WC&IM Act* section 49A;

hazardous firefighting service means —

(a) FES employment; and

(b) non-FES employment during which the worker attends hazardous fires at a rate at least equivalent to the rate of 5 hazardous fires per year; and

(c) volunteer service during which the volunteer attends hazardous fires at a rate at least equivalent to the rate of 5 hazardous fires per year;

non-FES employment has the meaning given in the *WC&IM Act* section 49A;

qualifying period has the meaning given in the WC&IM Act section 49A;

volunteer service means service as a registered volunteer whose duties involve or involved responding to hazardous fires.

(2) If a volunteer who has contracted a specified disease —

(a) as at the date of injury, had completed a period of firefighting service of, or periods of firefighting service in aggregate amounting to, at least the qualifying period for the specified disease; and

(b) is taken to have been exposed to the hazards of a fire scene in the course of the firefighting service; and

(c) in the case of a cancer of a kind mentioned in the WC&IM Act Schedule 4A item 13, satisfies the conditions (if any) prescribed for such a cancer by regulations made under that Act,

the specified disease is, for the purposes of this Part, taken to have been caused to the volunteer while engaged in volunteer activities, unless the responsible agency proves the contrary.

(3) For the purposes of subsection (2), a volunteer is taken to have been exposed to the hazards of a fire scene if the responsible agency is satisfied that the volunteer has completed a period of hazardous firefighting service of, or 2 or more periods of hazardous firefighting service in aggregate amounting to, at least the lesser of —

(a) 5 years; and

(b) the qualifying period.

[Section 36ZN inserted: No. 28 of 2016 s. 7.]

36ZO. Application of provisions of WC&IM Act under this Part

For the purpose of applying a provision of the WC&IM Act under this Part —

(a) a reference in the WC&IM Act to a worker is to be read as a reference to a volunteer; and

(b) a reference in the WC&IM Act to a worker's employer is to be read as a reference to a volunteer's responsible agency; and

(c) a reference in the WC&IM Act to a worker's employment is to be read as a reference to a volunteer's service as a volunteer.

[Section 36ZO inserted: No. 28 of 2016 s. 7.]

36ZP. Appropriate changes to WC&IM Act

For the purpose of this Part, appropriate changes to the WC&IM Act are —

(a) any changes to that Act that are prescribed by the regulations for the purposes of this Part; and

(b) any other changes to that Act that are necessary or convenient to give effect to this Part.

[Section 36ZP inserted: No. 28 of 2016 s. 7.]

Division 2 — Insured compensation

[Heading inserted: No. 28 of 2016 s. 7.]

36ZQ. Duty to insure

(1) In this section reference to loss or damage does not include loss or damage that is caused by or results from reasonable wear or tear, mechanical or electrical breakdown, failure or breakage.

(2) A responsible agency must effect and keep current insurance providing compensation for injury caused to present and former volunteers for which it is the responsible agency while engaged in volunteer activities, other than injury which is compensable under the WC&IM Act, where the date of injury is on or after the Part 6B commencement day.

(3) A responsible agency must effect and keep current insurance providing compensation for loss of or damage to vehicles, appliances, equipment and apparatus of volunteer units which it

establishes, maintains or authorises, where the loss or damage is caused on or after the Part 6B commencement day.

- (4) A responsible agency must effect and keep current insurance providing compensation for loss or damage caused to privately owned vehicles, appliances, equipment, apparatus and items of personal property in consequence of being used for or in connection with volunteer activities engaged in by a volunteer for which it is the responsible agency, where the loss or damage is caused on or after the Part 6B commencement day.

[Section 36ZO inserted: No. 28 of 2016 s. 7.]

36ZR. Amount of insured compensation

- (1) Subject to subsection (4), the compensation for an injury to a volunteer to be provided by an injury policy is to be of the amount and for the purposes that would apply under the WC&IM Act if the volunteer were a worker and suffered that injury and the WC&IM Act (with the appropriate changes) applies accordingly.
- (2) Where, under the WC&IM Act, an amount of compensation to be provided by an injury policy depends on weekly earnings, references to weekly earnings are taken to be references to the greater of —
- (a) the benchmark weekly earnings; or
 - (b) either —
 - (i) if the volunteer is a self-employed or unemployed person, the actual weekly earnings received by the volunteer; or
 - (ii) in any other case, the volunteer's weekly earnings calculated in accordance with the WC&IM Act.
- (3) WC&IM Act Schedule 1 clauses 8, 10, 11, 16, 17, 18, 18A and 19 apply (with the appropriate changes) to an injury policy as if they were set out in the policy.

- (4) The regulations may limit, with respect either to an individual volunteer or to volunteers generally, the amount of compensation for which a responsible agency is required by section 36ZQ(2) to insure.
- (5) The regulations may limit, with respect either to a single claim or to claims generally, the amount of compensation for which a responsible agency is required by section 36ZQ(3) or (4) to insure.
- (6) A responsible agency may effect insurance which provides a greater amount of compensation than is required under this section.

[Section 36ZR inserted: No. 28 of 2016 s. 7.]

36ZS. Terms of insurance

- (1) The terms of an injury policy must provide —
 - (a) that claims under the policy are subject to the same time limitation periods as would apply under the WC&IM Act if the injured volunteer were a worker and had suffered a compensable injury; and
 - (b) that a volunteer insured or proposed to be insured under the policy may be required to provide medical certificates or to submit to medical examinations, occupational or vocational assessments and the like for the purposes of the policy.
- (2) The regulations may —
 - (a) limit, modify or exclude any requirement in this Division to obtain or keep current insurance in respect of liabilities arising in prescribed circumstances or out of prescribed events; and
 - (b) otherwise limit, modify or exclude the requirement in this Division to obtain or keep current insurance.

(3) Subject to subsection (1), the regulations may prescribe any or all of the terms and conditions of insurance required by this Division.

(4) Subject to subsection (1), the regulations may prescribe the form of a policy providing insurance required by this Division.

[Section 36ZS inserted: No. 28 of 2016 s. 7.]

Division 3 — Uninsured compensation

[Heading inserted: No. 28 of 2016 s. 7.]

36ZT. Uninsured compensation for specified diseases

(1) This section applies if —

(a) a volunteer contracts a specified disease; and

(b) the specified disease is taken to be an injury caused while engaged in volunteer activities; and

(c) the date of injury is on or after 13 November 2013 but before the Part 6B commencement day.

(2) If this section applies, the volunteer is entitled to an amount of compensation equal to the amount that would be payable under an injury policy if the date of injury were on or after the Part 6B commencement day.

[Section 36ZT inserted: No. 28 of 2016 s. 7.]

36ZU. Additional compensation for specified injuries

(1) In this section —

prescribed amount has the meaning given in the WC&IM Act section 5(1);

specified injury means —

(a) death; or

(b) total loss of sight of both eyes; or

(c) total loss of sight of an only eye; or

- (d) permanent and incurable loss of mental capacity resulting in total inability to work; or
- (e) total and incurable paralysis of the limbs or of mental powers; or
- (f) loss of both hands; or
- (g) loss of a hand and foot; or
- (h) loss of both feet; or
- (i) severe facial scarring or disfigurement (including scarring or disfigurement as a result of burns); or
- (j) severe bodily, other than facial, scarring or disfigurement (including scarring or disfigurement as a result of burns).

- (2) A volunteer who has suffered a specified injury while engaged in volunteer activities on or after the Part 6B commencement day is entitled to a further amount, in addition to any amount payable under an injury policy, so that the total amount received by or in respect of that volunteer in relation to that injury is equal to the prescribed amount as at the date on which the injury was caused multiplied by 2.36.

[Section 36ZU inserted: No. 28 of 2016 s. 7.]

36ZV. Source of compensation under this Division

A responsible agency is to pay compensation to which a volunteer is entitled under this Division out of moneys appropriated by Parliament for that purpose.

[Section 36ZV inserted: No. 28 of 2016 s. 7.]

Division 4 — General

[Heading inserted: No. 28 of 2016 s. 7.]

36ZW. Payment of compensation

- (1) Subject to subsection (2), an amount payable under an injury policy or under section 36ZT or 36ZU is payable to the person

or persons who would be entitled under the WC&IM Act to receive it if the injured volunteer were a worker and had suffered a compensable injury, and the WC&IM Act (with the appropriate changes) applies accordingly.

(2) A spouse or de facto partner of the injured volunteer is to be taken for the purposes of this section to be wholly dependent on the injured volunteer's earnings.

(3) If an amount payable under an injury policy or under section 36ZT or 36ZU is payable to more than one person it is to be apportioned between those persons as the regulations provide.

[Section 36ZW inserted: No. 28 of 2016 s. 7.]

36ZX. Specified disease disputes

(1) In this section —

specified disease dispute means a dispute in connection with the application or operation of section 36ZN or 36ZT.

(2) The WC&IM Act Parts XI and XIII apply (with the appropriate changes) in relation to a specified disease dispute as if the specified disease dispute were a dispute as defined in the WC&IM Act section 176(1).

(3) Despite the WC&IM Act section 217B(1), for the purposes of an action for damages brought independently of this Act, a decision of an arbitrator in relation to a specified disease dispute is not final or binding on the parties to the dispute.

[Section 36ZX inserted: No. 28 of 2016 s. 7.]

Part 7 — Miscellaneous

37. Protection from personal and vicarious liability

- (1) Subject to subsection (2), a person does not incur civil liability for anything that the person has done, in good faith, in the performance or purported performance of a function under the emergency services Acts.
- (1a) Without limiting subsection (1) a person is taken to be performing a function under an emergency services Act if the person is —
 - (a) a member or officer of a private fire brigade or a volunteer fire brigade who is taking part in an activity carried out by the brigade for the purposes for which it was formed; or
 - (b) a volunteer fire fighter who is carrying out normal brigade activities (within the meaning of the *Bush Fires Act 1954*); or
 - (c) taking part in the performance by an SES Unit of its functions under Part 3A and is either —
 - (i) a member of the SES Unit; or
 - (ii) acting under the direction of a member of the SES Unit or a member of staff;or
 - (d) taking part in the performance by a VMRS Group of its functions under Part 3B and is either —
 - (i) a member of the VMRS Group; or
 - (ii) acting under the direction of a member of the VMRS Group or a member of staff;or
 - (e) taking part in the performance by a FES Unit of its functions under Part 3 and is either —
 - (i) a member of the FES Unit; or

- (ii) acting under the direction of a member of the FES Unit or a member of staff.
- (2) Subsection (1) does not affect any right to recover damages in respect of the death of or bodily injury to any person directly caused by, or by the driving of, a motor vehicle if, at the time of the death or bodily injury —
 - (a) the vehicle was owned or was being driven by a person who, but for subsection (1), would incur liability in respect of the death or injury; and
 - (b) there was in force in respect of the vehicle a contract of insurance in accordance with section 4 of the *Motor Vehicle (Third Party Insurance) Act 1943* or the corresponding legislation of a State or Territory prescribed for the purposes of section 3(4) of that Act.
- (3) The Crown, a local government and any other person are also relieved of any civil liability that any of them might otherwise have had for another person having done anything as described in subsection (1).
- (4) The protection given by this section applies even though the thing done in the performance or purported performance of a function under the emergency services Acts may have been capable of being done whether or not those Acts had been enacted.
- (5) Any damage, loss or injury to property that results from anything done, in good faith, in the performance or purported performance of a function under the emergency services Acts is taken to be damage by fire within the meaning of any policy of insurance covering that property against damage by fire, despite any clause or condition to the contrary contained in the policy.
- (6) In this section —
 - (a) a reference to the doing of anything includes a reference to the omission to do anything; and

- (b) **motor vehicle** has the meaning given in section 3(1) of the *Motor Vehicle (Third Party Insurance) Act 1943*.

[Section 37 amended ~~by~~ by No. 38 of 2002 s. 13; No. 22 of 2012 s. 32 and 44.]

38. Department's operating accounts, application of

- (1) Any amounts credited to an operating account of the Department under section 8(3), 9(2) or 36UA, or otherwise as the result of the operation or administration of the emergency services Acts, may be applied only for the purposes of those Acts.
- (2) Without limiting subsection (1), amounts credited to an operating account of the Department as described in that subsection may from time to time be applied for the purposes of the emergency services Acts to purchase, construct, renew, maintain or replace —
- (a) land, buildings, vehicles, vessels, plant or equipment; or
- (b) any other property approved by the Minister.
- (3) The *Financial Management Act 2006* section 20(1) does not apply in relation to amounts credited to an operating account of the Department as described in subsection (1).

[Section 38 inserted by No. 22 of 2012 s. 33.]

38A. Offences in relation to SES, VMRS and FES operations

- (1) A person must not obstruct or hinder a relevant officer in the performance of the officer's functions under Part 3A, 3B or 3. Penalty: \$5 000.
- (2) A person must not wilfully damage or interfere with —
- (a) the property of an SES Unit, a VMRS Group or a FES Unit; or

s. 38B

- (b) any property of the Minister used for the performance of the FES Commissioner's functions under Part 3A, 3B or 3.

Penalty: \$5 000.

- (3) In this section —

relevant officer means —

- (a) a member of staff; or
- (b) a member of an SES Unit, a VMRS Group or a FES Unit,

who is performing a function under Part 3A, 3B or 3.

[Section 38A inserted-by: No. 38 of 2002 s. 14; amended-by: No. 42 of 2002 s. 16; No. 22 of 2012 s. 34 and 44.]

38B. Unauthorised use etc. of operational names etc., offence

- (1) Unless authorised under an emergency services Act or in writing by the FES Commissioner, a person must not use —
 - (a) the name of the Department or an operational name (within the meaning of section 13); or
 - (b) any abbreviation of any of those names; or
 - (c) a prescribed symbol; or
 - (d) any symbol that so closely resembles a prescribed symbol that it is capable of being mistaken for it.

Penalty: \$5 000.

- (2) Unless authorised under an emergency services Act or in writing by the FES Commissioner, a person must not —
 - (a) use any name, title, description or symbol that expresses or implies an association with the Department; or
 - (b) otherwise represent that the person is associated with the Department.

Penalty: \$5 000.

- (3) In this section —

symbol includes a logo, insignia, emblem, design or other identifying mark.

[Section 38B inserted ~~by~~: No. 38 of 2002 s. 14; amended ~~by~~: No. 22 of 2012 s. 35.]

38C. Impersonating member of staff etc., offence

A person must not falsely represent, by words or conduct, that he or she is —

- (a) a member of staff; or
- (b) a member or officer of a private fire brigade or volunteer fire brigade, as those terms are defined in the *Fire Brigades Act 1942*; or
- (c) a volunteer fire fighter, within the meaning of the *Bush Fires Act 1954*; or
- (d) a member of an SES Unit, a VMRS Group or a FES Unit.

Penalty: \$5 000.

[Section 38C inserted ~~by~~: No. 38 of 2002 s. 14; amended ~~by~~: No. 22 of 2012 s. 44.]

39. Disclosure etc. of information obtained in course of duty restricted

- (1) This section applies to a person who is or has been —
 - (a) a member of staff; or
 - (b) a member of an advisory committee established under section 24(1).
- (2) A person to whom this section applies must not, directly or indirectly, record, disclose, or make use of any information obtained in the course of duty except —
 - (a) for the purpose of performing functions under the emergency services Acts; or

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- (b) as required or allowed by this Act or under another written law; or
- (c) with the written consent of the person to whom the information relates; or
- (d) in prescribed circumstances.

Penalty: \$10 000 or imprisonment for 12 months.

[Section 39 amended-by: No. 22 of 2012 s. 36.]

40. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

41. Review of Act

- (1) The Minister is to carry out a review of the operation and effectiveness of the emergency services Acts as soon as practicable after the expiry of 5 years from the commencement of the *Fire and Emergency Services Legislation Amendment Act 2012* section 37¹.
- (2) In the course of that review the Minister is to consider and have regard to —
 - (a) whether there is a need for the emergency services Acts to continue; and
 - [(b) deleted]*
 - (c) any other matters that appear to the Minister to be relevant to the operation and effectiveness of the emergency services Acts.
- (3) The Minister is to prepare a report based on the review and, as soon as practicable after the report is prepared, is to cause it to be laid before each House of Parliament.

[Section 41 amended-by: No. 22 of 2012 s. 37.]

**Part 8 — Savings and transitional provisions relating
to the *Fire and Emergency Services Legislation
Amendment Act 2012***

[Heading inserted-by: No. 22 of 2012 s. 39.]

Division 1 — Interpretation

[Heading inserted-by: No. 22 of 2012 s. 39.]

42. Terms used

In this Part —

amended Act means this Act as amended by the *Fire and Emergency Services Legislation Amendment Act 2012* Part 2;

amended Bush Fires Act means the *Bush Fires Act 1954* as amended by the *Fire and Emergency Services Legislation Amendment Act 2012* Part 3;

amended Fire Brigades Act means the *Fire Brigades Act 1942* as amended by the *Fire and Emergency Services Legislation Amendment Act 2012* Part 4;

amended Superannuation Act means the *Fire and Emergency Services Superannuation Act 1985* as amended by the *Fire and Emergency Services Legislation Amendment Act 2012* Part 5;

assets means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description and includes money, securities, choses in action and documents;

Authority means the Fire and Emergency Services Authority of Western Australia established by section 4 of the former Act;

board of management means the board of management referred to in section 6 of the former Act;

consultative committees means the committees appointed under section 22 of the former Act;

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former Act means this Act as in force before the transfer time;

former Bush Fires Act means the *Bush Fires Act 1954* as in force before the transfer time;

former Fire Brigades Act means the *Fire Brigades Act 1942* as in force before the transfer time;

former Superannuation Act means the *Fire and Emergency Services Superannuation Act 1985* as in force before the transfer time;

liability means any liability, duty or obligation whether actual, contingent or prospective, liquidated or unliquidated, or whether owed alone or jointly or jointly and severally with any other person;

relevant successor means —

- (a) the Minister, in relation to the Authority and a function of the Authority that, at the transfer time, becomes a function of the Minister; and
- (b) the FES Commissioner, in relation to the Authority and a function of the Authority that, at the transfer time, becomes a function of the FES Commissioner; and
- (c) the State, in relation to assets and liabilities transferred to the State by section 45; and
- (d) the FES Ministerial Body, in relation to assets and liabilities transferred to the FES Ministerial Body by section 45;

right means any right, power, privilege or immunity whether actual, prospective or contingent;

statutory transition means the transition from the provisions of the former Act, former Bush Fires Act and former Fire Brigades Act to the provisions of the amended Act, amended Bush Fires Act and amended Fire Brigades Act, including the transition from the Authority to a relevant successor;

transfer order means an order under section 44;

transfer time means the time when the *Fire and Emergency Services Legislation Amendment Act 2012* section 7 comes into operation¹.

[Section 42 inserted ~~by~~: No. 22 of 2012 s. 39.]

Division 2 — Transfer of Authority’s assets, liabilities, etc.

[Heading inserted ~~by~~: No. 22 of 2012 s. 39.]

43. Authority (FESA) abolished

At the transfer time the Authority is abolished and the members of the board of management go out of office.

[Section 43 inserted ~~by~~: No. 22 of 2012 s. 39.]

44. Transfer of assets etc., Minister may order

(1) To facilitate the statutory transition, the Minister may make and publish in the *Gazette* an order that —

- (a) specifies any assets and liabilities of the Authority that are to be assigned to the FES Ministerial Body by the operation of section 45; and
- (b) specifies proceedings in which the FES Ministerial Body is to be substituted for the Authority as a party by the operation of section 45; and
- (c) specifies any agreement or instrument that, by the operation of section 45, is to have effect as if references to the State or the FES Ministerial Body were substituted, in accordance with the order, for references in the agreement or instrument to the Authority.

(2) A transfer order may also deal with incidental or supplementary matters and has effect accordingly.

(3) The transfer order may specify things by reference to schedules that —

- (a) need not be published in the *Gazette*; but
- (b) must be available for public inspection,

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and anything specified in a schedule is to be taken to be specified in the order.

- (4) A thing may be specified in a transfer order by describing the class to which it belongs.
- (5) Before a transfer order is made specifying anything by reference to a schedule, a copy of which will be required to be delivered to a relevant official under section 49(3), the Minister is to consult with the, or each, relevant official as to the form and content of the schedule.
- (6) To the extent to which a schedule to a transfer order relates to the functions of the Registrar of Titles, the schedule is to be in a form that meets the requirements of the Registrar.
- (7) A thing done by, under or for the purposes of this Part is not invalid merely because subsection (5) or (6) was not complied with.
- (8) A transfer order can only be made before the transfer time.
- (9) The fact that a previous transfer order has been made does not prevent a further transfer order from being made.
- (10) A transfer order, or a schedule to which it refers, may be amended by the Minister, by further order published in the *Gazette*, but no such amendment may be made after the transfer time.

[Section 44 inserted ~~by~~ No. 22 of 2012 s. 39.]

45. Transfer order under s. 44, effect of

- (1) If a transfer order is made, then —
 - (a) at the transfer time —
 - (i) the assets of the Authority specified in the transfer order are, by the operation of this section, assigned to the FES Ministerial Body;
and

- (ii) the rest of the assets of the Authority are, by the operation of this section, assigned to the State;
- and
- (b) at the transfer time —
 - (i) the liabilities of the Authority specified in the transfer order are, by the operation of this section, assigned to and become the liabilities of the FES Ministerial Body; and
 - (ii) the rest of the liabilities of the Authority are, by the operation of this section, assigned to and become the liabilities of the State;
- and
- (c) at the transfer time, the FES Ministerial Body is substituted for the Authority as a party to any proceedings specified in the transfer order, and the State is substituted for the Authority as a party to all other proceedings in which the Authority was a party immediately before the transfer time; and
 - (d) any agreement or instrument specified in the order has effect, by the operation of this section, as if references to the State or the FES Ministerial Body were, at the transfer time, substituted, in accordance with the order, for references in it to the Authority; and
 - (e) any proceedings or remedy that might have been commenced by, or available against or to, the Authority in relation to the assets and liabilities assigned by paragraphs (a) and (b) may be commenced by, or are available against or to —
 - (i) the FES Ministerial Body, in the case of assets and liabilities assigned by paragraphs (a)(i) and (b)(i); and
 - (ii) the State, in the case of assets and liabilities assigned by paragraphs (a)(ii) and (b)(ii);
- and

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- (f) anything done or omitted to be done in relation to the assets and liabilities assigned by paragraphs (a) and (b) before the assignment, by, to or in respect of the Authority (to the extent that that thing has any effect) is to be taken to have been done or omitted by, to or in respect of —
 - (i) the FES Ministerial Body, in the case of assets and liabilities assigned by paragraphs (a)(i) and (b)(i); and
 - (ii) the State, in the case of assets and liabilities assigned by paragraphs (a)(ii) and (b)(ii).
- (2) As soon as is practicable after the transfer time, all records and data of the Authority are to be delivered to the FES Commissioner.

[Section 45 inserted ~~by~~: No. 22 of 2012 s. 39.]

46. Fire and Emergency Services Authority Account

- (1) In this section —
former account means the Fire and Emergency Services Authority Account referred to in section 30 of the former Act.
- (2) At the transfer time, any moneys standing to the credit of the former account are to be credited to an operating account of the Department, and the former account is then to be closed.
- (3) Moneys referred to in subsection (2) may be applied —
 - (a) in the payment of any liabilities of the former account arising before the transfer time; and
 - (b) for the purposes of the emergency services Acts.
- (4) The operating account referred to in subsection (2) is to be credited with any money payable to the former account before the transfer time that is paid after that time.
- (5) If in an agreement, instrument or other document there is a reference to the former account, that reference is, unless the

context otherwise requires, to be read or to have effect from the transfer time as if it were a reference to the operating account referred to in subsection (2).

[Section 46 inserted ~~by~~: No. 22 of 2012 s. 39.]

47. Reserve funds

At the transfer time, any moneys in a reserve fund established under section 35A of the former Act are to be credited to an operating account of the Department.

[Section 47 inserted ~~by~~: No. 22 of 2012 s. 39.]

48. Authority to complete necessary transactions

- (1) If an asset or liability of the Authority cannot be properly assigned to the State or the FES Ministerial Body by the operation of this Division (whether because the matter is governed otherwise than by the law of the State or for any other reason) —
 - (a) the Authority is to be taken to continue to hold that asset or be liable for that liability until it is effectively assigned to the State or the FES Ministerial Body in accordance with this Division; and
 - (b) the Authority is to take all practicable steps for the purpose of ensuring that the asset or liability is effectively assigned to the State or the FES Ministerial Body in accordance with this Division.
- (2) The fact that subsection (1)(a) applies to an asset or liability that is to be assigned to the State or the FES Ministerial Body under this Division does not affect the duty of the accountable authority of the Department under the *Financial Management Act 2006*.
- (3) Despite section 43, the Authority continues in existence for the purpose of performing the functions described in subsection (1).

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Division 2 Transfer of Authority's assets, liabilities, etc.

s. 49

- (4) The Authority is to perform those functions through a person appointed by the Minister.
- (5) The person holds office at the pleasure of the Minister and on such terms and conditions as the Minister determines.
- (6) The Authority as continued by this section has the powers that are necessary or convenient for the purposes of this section.

[Section 48 inserted ~~by~~ No. 22 of 2012 s. 39.]

49. Registration of documents

- (1) In this section —

relevant official means —

- (a) the Registrar of Titles; or
- (b) the Registrar of Deeds and Transfers; or
- (c) any other person authorised by a written law to record and give effect to the registration of documents relating to property transactions,

according to which, if any, of them has responsibility for a register relating to the relevant property;

relevant property means property of a kind affected by this Part, whether it is an estate or interest in land or other property.

- (2) The relevant officials are to take notice of this Part and any transfer order, including a schedule to which the order refers, and are to record and register in the appropriate manner the documents necessary to show the effect of this Part and the transfer order.
- (3) The Minister is to cause a copy of each transfer order and any schedule to which it refers to be delivered to each relevant official.

[Section 49 inserted ~~by~~ No. 22 of 2012 s. 39.]

50. Exemption from State tax

- (1) In this section —

State tax includes duty chargeable under the *Duties Act 2008* and any other tax, duty, fee, levy or charge, under a law of the State.

- (2) State tax is not payable in relation to —
 - (a) anything that occurs by the operation of this Part; or
 - (b) anything done (including a transaction entered into or an instrument or document of any kind made, executed, lodged or given) under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (3) The Minister may certify in writing that —
 - (a) a specified thing occurred by the operation of this Part; or
 - (b) a specified thing was done under this Part, or to give effect to this Part, or for a purpose connected with or arising out of giving effect to this Part.
- (4) For all purposes and in all proceedings, a certificate under subsection (3) is sufficient evidence of the matters it certifies, except so far as the contrary is shown.

[Section 50 inserted ~~by~~ No. 22 of 2012 s. 39.]

51. Error in transfer order, correcting

- (1) The Minister may, by order published in the *Gazette*, make any provision that is necessary to correct any error in a transfer order or a schedule to which a transfer order refers.
- (2) An order under this section may be made so as to have effect from the transfer time.
- (3) To the extent that a provision of an order under this section has effect before the day of its publication in the *Gazette*, section 45 does not, as a result of that provision, operate so as —

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- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the day of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the day of publication.

[Section 51 inserted ~~by~~ No. 22 of 2012 s. 39.]

Division 3 — Chief executive officer and certain other persons

[Heading inserted ~~by~~ No. 22 of 2012 s. 39.]

52. CEO of Authority (FESA) becomes FES Commissioner

- (1) The person holding office as the chief executive officer of the Authority in accordance with section 19 of the former Act immediately before the transfer time is to be taken to have been appointed as the FES Commissioner on the same terms and conditions.
- (2) Except as otherwise agreed by the person, the operation of subsection (1) does not —
 - (a) affect the person's pay, as that term is defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* regulation 3(1); or
 - (b) affect the person's existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (c) affect any rights under a superannuation scheme; or
 - (d) interrupt the continuity of the person's service.
- (3) For the purposes of subsection (2)(d), the person's service with the Authority is to be taken to have been with the Department.

[Section 52 inserted ~~by~~ No. 22 of 2012 s. 39.]

53. Bush fire liaison officers and Chief Bush Fire Control Officers continue in office

- (1) The appointment of a person as a bush fire liaison officer in accordance with section 12 of the former Bush Fires Act that has effect immediately before the transfer time continues to have effect as the designation of the person as a bush fire liaison officer under section 12 of the amended Bush Fires Act.
- (2) The appointment of a person by the Authority as the Chief Bush Fire Control Officer for the district of a local government under section 38A of the former Bush Fires Act that has effect immediately before the transfer time continues to have effect as the designation of the person by the FES Commissioner as the Chief Bush Fire Control Officer for that district under section 38A of the amended Bush Fires Act.

[Section 53 inserted ~~by~~ No. 22 of 2012 s. 39.]

54. Fire and Emergency Services Superannuation Board, certain members of continue

The appointment of a person by the Authority as a member or alternate member of the Fire and Emergency Services Superannuation Board under the former Superannuation Act section 4(4)(a) or (5) that has effect immediately before the transfer time continues to have effect as the appointment of the person by the FES Commissioner as a member or alternate member of that Board under that provision of the amended Superannuation Act.

[Section 54 inserted ~~by~~ No. 22 of 2012 s. 39.]

Division 4 — Consultative committees

[Heading inserted ~~by~~ No. 22 of 2012 s. 39.]

55. Committees cease

At the transfer time the members of the consultative committees go out of office.

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Emergency Services Legislation Amendment Act 2012

Division 5 Continuing effect of things done

s. 56

[Section 55 inserted ~~by~~: No. 22 of 2012 s. 39.]

56. Records of committees, transfer of

As soon as is practicable after the transfer time all records and data of the consultative committees are to be delivered to the FES Commissioner.

[Section 56 inserted ~~by~~: No. 22 of 2012 s. 39.]

Division 5 — Continuing effect of things done

[Heading inserted ~~by~~: No. 22 of 2012 s. 39.]

57. Completion of things commenced

Anything commenced to be done by the Authority before the transfer time may be continued by the relevant successor so far as the doing of that thing is within the functions of the relevant successor.

[Section 57 inserted ~~by~~: No. 22 of 2012 s. 39.]

58. Continuing effect of things done

Anything done or omitted to be done before the transfer time by, to or in respect of the Authority, to the extent that it —

- (a) has any force or significance; and
- (b) is not governed by another provision of this Part,

is to be taken to have been done or omitted by, to or in respect of the relevant successor.

[Section 58 inserted ~~by~~: No. 22 of 2012 s. 39.]

59. Agreements and instruments generally

Any agreement or instrument subsisting immediately before the transfer time —

- (a) to which the Authority was a party; or
- (b) which contains a reference to the Authority,

has effect on and after transfer time, to the extent to which the agreement or instrument relates to the functions of a relevant successor, as if —

- (c) the relevant successor were substituted for the Authority as a party to the agreement or instrument; and
- (d) any reference in the agreement or instrument to the Authority were, unless the context otherwise requires, amended to be or include a reference to the relevant successor.

[Section 59 inserted ~~by~~: No. 22 of 2012 s. 39.]

Division 6 — Other transitional provisions

[Heading inserted ~~by~~: No. 22 of 2012 s. 39.]

60. Continuing duty of confidentiality

Despite the amendment of section 39 by the *Fire and Emergency Services Legislation Amendment Act 2012* section 36, section 39 continues to apply to a person who has been a member of the Authority, a member of a consultative committee or a member of staff (as defined in section 3 of the former Act).

[Section 60 inserted ~~by~~: No. 22 of 2012 s. 39.]

61. Investments

- (1) Despite the deletion of Part 6 of the former Act by the *Fire and Emergency Services Legislation Amendment Act 2012* section 25, the investment of any funds of the Authority that is authorised under section 31 of the former Act immediately before the transfer time continues to be authorised as if that section had not been deleted.
- (2) Any funds referred to in subsection (1) that cease to be invested as described in that subsection are to be credited to an operating account of the Department.

[Section 61 inserted ~~by~~: No. 22 of 2012 s. 39.]

62. Transitional regulations

- (1) In this section —
specified means specified or described in the regulations;
transitional matter means a matter that needs to be dealt with for the purpose of effecting the statutory transition.
- (2) If there is no sufficient provision in this Part or in a transfer order for dealing with a transitional matter, regulations made under this Act may prescribe all matters that are necessary or convenient to be prescribed for dealing with the matter.
- (3) Regulations referred to in subsection (2) may provide that a specified provision of this Act does not apply, or applies with specified modifications, to or in relation to any matter.
- (4) If regulations referred to in subsection (2) provide that a specified state of affairs is to be taken to have existed, or not to have existed, on and from a day that is earlier than the day on which the regulations are published in the *Gazette* but not earlier than the commencement of the relevant provision of the *Fire and Emergency Services Legislation Amendment Act 2012*, the regulations have effect according to their terms.
- (5) If regulations contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the regulations were published in the *Gazette*; or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the regulations were published in the *Gazette*.
- (6) Regulations cannot be made for the purposes of this section after the end of 24 months after the day on which the *Fire and Emergency Services Legislation Amendment Act 2012* receives the Royal Assent¹.

[Section 62 inserted ~~by~~: No. 22 of 2012 s. 39.]

63. Saving

The operation of any provision of this Part is not to be regarded —

- (a) as a breach of contract or confidence or otherwise as a civil wrong; or
- (b) as a breach of any contractual provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities or the disclosure of information; or
- (c) as giving rise to any remedy by a party to an instrument or as causing or permitting the termination of any instrument, because of a change in the beneficial or legal ownership of any asset, right or liability; or
- (d) as causing any contract or instrument to be void or otherwise unenforceable; or
- (e) as releasing or allowing the release of any surety.

[Section 63 inserted ~~by~~: No. 22 of 2012 s. 39.]

[Schedule 1 deleted ~~by~~: No. 22 of 2012 s. 40.]

Schedule 1A — Modification of operation of Part 6A

[s. 36ZK]

[*Heading inserted ~~by~~: No. 42 of 2002 s. 17.*]

column 1: provision	column 2: amendment or repeal
s. 36P	Subsection (2) is repealed and the following subsection is inserted instead — “ <p style="text-align: center;">(2) The levy is payable to the local government for the district in which the leviable land is located.</p> ”.
s. 36S(1)	“or the FES Commissioner, as the case requires,” is deleted.
s. 36T(3)	“or to the FES Commissioner” is deleted.
s. 36U	The section is repealed.
s. 36V	The section is repealed.
s. 36X	The section is repealed.
s. 36Z(1)	“or by the FES Commissioner” is deleted.
s. 36Z(2)	(a) “or the FES Commissioner” is deleted; (b) “or the State, as the case requires” is deleted.
s. 36Z	Subsection (3) is repealed and the following subsection is inserted instead — “ <p style="text-align: center;">(3) In subsection (1) — <i>land</i> has the same meaning as <i>leviable land</i> has in Division 9.</p> ”.

column 1: provision	column 2: amendment or repeal
s. 36ZB	The following definitions are inserted in the appropriate alphabetical positions — “ <p style="text-align: center;"><i>land</i> has the same meaning as <i>leviable land</i> has in Division 9;</p> <p style="text-align: center;"><i>local government</i>, in relation to land, means the local government for the district in which the land is located.</p> ”.
s. 36ZC(1) and (2)	“FES Commissioner” is deleted in each place where it occurs and the following is inserted instead — “ local government ”.
s. 36ZD	(a) “Minister” is deleted and the following is inserted instead — “ local government ”; (b) “FES Commissioner” is deleted in both places where it occurs and the following is inserted instead — “ local government ”.
s. 36ZH(2)(b)	After “payable” the following is inserted — “ and to the local government ”.

[Schedule 1A inserted ~~by~~: No. 42 of 2002 s. 17; amended ~~by~~: No. 22 of 2012 s. 41.]

[Schedule 2 deleted ~~by~~: No. 22 of 2012 s. 42.]

Notes

- ¹ This is a compilation of the *Fire and Emergency Services Act 1998* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Fire and Emergency Services Authority of Western Australia Act 1998</i> ³	41 of 1998	4 Nov 1998	s. 1 and 2: 4 Nov 1998; Act other than s. 1 and 2: 1 Jan 1999 (see s. 2 and <i>Gazette</i> 22 Dec 1998 p. 6833)
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Labour Relations Reform Act 2002</i> s. 27	20 of 2002	8 Jul 2002	15 Sep 2002 (see s. 2 and <i>Gazette</i> 6 Sep 2002 p. 4487)
<i>Fire and Emergency Services Legislation Amendment Act 2002</i> Pt. 2	38 of 2002	20 Nov 2002	30 Nov 2002 (see s. 2 and <i>Gazette</i> 29 Nov 2002 p. 5651-2)
<i>Fire and Emergency Services Legislation (Emergency Services Levy) Amendment Act 2002</i> Pt. 2	42 of 2002	11 Dec 2002	1 Jan 2003 (see s. 2 and <i>Gazette</i> 30 Dec 2002 p. 6635)
Reprint 1: The <i>Fire and Emergency Services Authority of Western Australia Act 1998</i> as at 4 Apr 2003 (includes amendments as listed above)			
<i>Labour Relations Reform (Consequential Amendments) Regulations 2003</i> r. 21 published in <i>Gazette</i> 15 Aug 2003 p. 3685-92			15 Sep 2003 (see r. 2)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 47 ^{4,5}	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4, 5(1) and Sch. 1 cl. 64	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<i>Petroleum Amendment Act 2007</i> s. 93	35 of 2007	21 Dec 2007	19 Jan 2008 (see s. 2(b) and <i>Gazette</i> 18 Jan 2008 p. 147)

Short title	Number and year	Assent	Commencement
Reprint 2: The Fire and Emergency Services Authority of Western Australia Act 1998 as at 14 Mar 2008 (includes amendments as listed above)			
<i>Statutes (Repeals and Miscellaneous Amendments) Act 2009</i> s. 57	8 of 2009	21 May 2009	22 May 2009 (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 89	39 of 2010	1 Oct 2010	1 Dec 2010 (see s. 2(b) and <i>Gazette</i> 5 Nov 2010 p. 5563)
<i>Fire and Emergency Services Legislation Amendment Act 2012</i> Pt. 2 (s. 3-44)	22 of 2012	29 Aug 2012	s. 39: 31 Oct 2012 (see s. 2(b) and <i>Gazette</i> 31 Oct 2012 p. 5255); Pt. 2 other than s. 39: 1 Nov 2012 (see s. 2(b) and <i>Gazette</i> 31 Oct 2012 p. 5255)
Reprint 3: The Fire and Emergency Services Act 1998 as at 7 Dec 2012 (includes amendments as listed above)			
<i>Fire and Emergency Services Amendment Act 2015</i>	20 of 2015	26 Aug 2015	s. 1 and 2: 26 Aug 2015 (see s. 2(a)); Act other than s. 1 and 2: 27 Aug 2015 (see s. 2(b))

~~^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.~~

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016</i> Pt. 3 ⁶	28 of 2016	21 Sep 2016	To be proclaimed 16 Sep 2017 (see s. 2(b)) and Gazette 15 Sep 2017 p. 4791

² Repealed by the *Mining Act 1978*.

³ Now known as the *Fire and Emergency Services Act 1998*; short title changed (see note under s. 1).

⁴ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁵ The *State Administrative Tribunal Regulations 2004* r. 49 is a transitional provision.

⁶ ~~On the date as at which this compilation was prepared, the *Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016* Pt. 3 had not come into operation. It reads as follows:~~

~~**Part 3—Fire and Emergency Services
Act 1998 amended**~~

~~**6. Act amended**~~

~~— This Part amends the *Fire and Emergency Services Act 1998*.~~

~~**7. Part 6B inserted**~~

~~— After section 36ZL insert:~~

~~**Part 6B—Compensation for injury, loss or damage**~~

~~**Division 1—Preliminary**~~

~~**36ZM. Terms used**~~

~~— In this Part —~~

~~— *appropriate changes*, to the WC&IM Act, has the meaning given in section 36ZP;~~

~~— *benchmark weekly earnings*, in relation to a volunteer who receives compensation for an injury, means —~~

~~— (a) the estimate of the average weekly total earnings of full-time adult employees in Western Australia most recently published by the Australian Bureau of Statistics before the date of injury; or~~

~~— (b) if the Australian Bureau of Statistics ceases to publish the estimate of the amount referred to in paragraph (a), the amount fixed by, or determined in accordance with, the regulations;~~

~~— *BFA volunteer* means —~~

~~— (a) a bush fire control officer appointed under the *Bush Fires Act 1954* section 38; or~~

~~— (b) a registered member of a bush fire brigade established under the *Bush Fires Act 1954* section 41;~~

-
- ~~— **compensable injury** has the meaning given in the WC&IM Act section 159;~~
 - ~~— **date of injury**, in relation to a person who has contracted a specified disease, means the earlier of these days —~~
 - ~~— (a) the day on which the person becomes totally or partially incapacitated for work by reason of the specified disease;~~
 - ~~— (b) the day on which the person is first diagnosed by a medical practitioner as having contracted the specified disease;~~
 - ~~— **injury** has the meaning given in the WC&IM Act section 5(1);~~
 - ~~— **injury policy** means an insurance policy effected for the purposes of section 36ZQ(2);~~
 - ~~— **medical practitioner** has the meaning given in the WC&IM Act section 5(1);~~
 - ~~— **Part 6B commencement day** means the day on which *Firefighters and Emergency Volunteers Legislation Amendment (Compensation) Act 2016* section 7 comes into operation;~~
 - ~~— **registered volunteer** means —~~
 - ~~— (a) a BFA volunteer; or~~
 - ~~— (b) a registered member of a FES Unit; or~~
 - ~~— (c) an officer or member of a volunteer fire brigade as defined in the *Fire Brigades Act 1942* section 4(1) whose election or appointment has been approved by the FES Commissioner under section 30 of that Act; or~~
 - ~~— (d) a registered member of an SES Unit; or~~
 - ~~— (e) a registered member of a VMRS Group;~~
 - ~~— **responsible agency** means —~~
 - ~~— (a) in relation to a BFA volunteer, the local government which —~~
 - ~~— (i) appoints the volunteer to be a bush fire control officer; or~~
 - ~~— (ii) maintains the bush fire brigade of which the volunteer is a registered member,~~
 - ~~— as the case may be; and~~
 - ~~— (b) in relation to any other registered volunteer, the FES Commissioner; and~~
 - ~~— (c) in relation to an unregistered volunteer —~~
 - ~~— (i) if the unregistered volunteer engages in volunteer activities under the direction of a BFA volunteer, the local government which is the responsible agency for that BFA volunteer; and~~

- ~~— (ii) — in any other case, the FES Commissioner;~~
- ~~— *specified disease* has the meaning given in the WC&IM Act section 49A;~~
- ~~— *unregistered volunteer* means a person who is not a registered volunteer, but who engages in volunteer activities under the direction of a registered volunteer or a member of operational staff;~~
- ~~— *vehicle* includes a rail vehicle, a vessel, an aircraft and any other thing used as a means of transport;~~
- ~~— *volunteer* means a registered volunteer or an unregistered volunteer;~~
- ~~— *volunteer activities* means —~~
 - ~~— (a) — in relation to a BFA volunteer or an unregistered volunteer working under the direction of a BFA volunteer, normal brigade activities as defined in the *Bush Fires Act 1954* section 35A; and~~
 - ~~— (b) — in relation to any other registered volunteer or an unregistered volunteer working under the direction of such a volunteer, activities carried out by the volunteer unit of which the registered volunteer is an officer or member for the purposes for which that unit was formed; and~~
 - ~~— (c) — in relation to an unregistered volunteer working under the direction of a member of operational staff, FES activities engaged in at the direction of that member;~~
- ~~— *volunteer unit* means —~~
 - ~~— (a) — a bush fire brigade established under the *Bush Fires Act 1954* section 41; or~~
 - ~~— (b) — a FES Unit; or~~
 - ~~— (c) — a volunteer fire brigade within the meaning given in the *Fire Brigades Act 1942* section 4(1); or~~
 - ~~— (d) — an SES Unit; or~~
 - ~~— (e) — a VMRS Group;~~
- ~~— *WC&IM Act* means the *Workers' Compensation and Injury Management Act 1981*.~~

36ZN. — When specified disease taken to be injury caused while engaged in volunteer activities

- ~~— (1) — In this section —~~
 - ~~— *FES employment* has the meaning given in the WC&IM Act section 49A;~~

- ~~— **firefighting employment** has the meaning given in the WC&IM Act section 49A;~~
- ~~— **firefighting service** means —~~
 - ~~— (a) — firefighting employment; or~~
 - ~~— (b) — volunteer service;~~
- ~~— **hazardous fire** has the meaning given in the WC&IM Act section 49A;~~
- ~~— **hazardous firefighting service** means —~~
 - ~~— (a) — FES employment; and~~
 - ~~— (b) — non-FES employment during which the worker attends hazardous fires at a rate at least equivalent to the rate of 5 hazardous fires per year; and~~
 - ~~— (c) — volunteer service during which the volunteer attends hazardous fires at a rate at least equivalent to the rate of 5 hazardous fires per year;~~
- ~~— **non-FES employment** has the meaning given in the WC&IM Act section 49A;~~
- ~~— **qualifying period** has the meaning given in the WC&IM Act section 49A;~~
- ~~— **volunteer service** means service as a registered volunteer whose duties involve or involved responding to hazardous fires.~~
- ~~— (2) — If a volunteer who has contracted a specified disease —~~
 - ~~— (a) — as at the date of injury, had completed a period of firefighting service of, or periods of firefighting service in aggregate amounting to, at least the qualifying period for the specified disease; and~~
 - ~~— (b) — is taken to have been exposed to the hazards of a fire scene in the course of the firefighting service; and~~
 - ~~— (c) — in the case of a cancer of a kind mentioned in the WC&IM Act Schedule 4A item 13, satisfies the conditions (if any) prescribed for such a cancer by regulations made under that Act;~~
- ~~— the specified disease is, for the purposes of this Part, taken to have been caused to the volunteer while engaged in volunteer activities, unless the responsible agency proves the contrary.~~
- ~~— (3) — For the purposes of subsection (2), a volunteer is taken to have been exposed to the hazards of a fire scene if the responsible agency is satisfied that the volunteer has completed a period of hazardous firefighting service of, or 2 or more periods of hazardous firefighting service in aggregate amounting to, at least the lesser of —~~

- ~~— (a) — 5 years; and~~
- ~~— (b) — the qualifying period.~~

36ZO. — Application of provisions of WC&IM Act under this Part

~~— For the purpose of applying a provision of the WC&IM Act under this Part —~~

- ~~— (a) — a reference in the WC&IM Act to a worker is to be read as a reference to a volunteer; and~~
- ~~— (b) — a reference in the WC&IM Act to a worker's employer is to be read as a reference to a volunteer's responsible agency; and~~
- ~~— (c) — a reference in the WC&IM Act to a worker's employment is to be read as a reference to a volunteer's service as a volunteer.~~

36ZP. — Appropriate changes to WC&IM Act

~~— For the purpose of this Part, appropriate changes to the WC&IM Act are —~~

- ~~— (a) — any changes to that Act that are prescribed by the regulations for the purposes of this Part; and~~
- ~~— (b) — any other changes to that Act that are necessary or convenient to give effect to this Part.~~

Division 2 — Insured compensation

36ZQ. — Duty to insure

- ~~— (1) — In this section reference to loss or damage does not include loss or damage that is caused by or results from reasonable wear or tear, mechanical or electrical breakdown, failure or breakage.~~
- ~~— (2) — A responsible agency must effect and keep current insurance providing compensation for injury caused to present and former volunteers for which it is the responsible agency while engaged in volunteer activities, other than injury which is compensable under the WC&IM Act, where the date of injury is on or after the Part 6B commencement day.~~
- ~~— (3) — A responsible agency must effect and keep current insurance providing compensation for loss of or damage to vehicles, appliances, equipment and apparatus of volunteer units which it establishes, maintains or authorises, where the loss or damage is caused on or after the Part 6B commencement day.~~
- ~~— (4) — A responsible agency must effect and keep current insurance providing compensation for loss or damage caused to privately owned vehicles, appliances, equipment, apparatus and items of personal property in consequence of being used for or in~~

~~connection with volunteer activities engaged in by a volunteer for which it is the responsible agency, where the loss or damage is caused on or after the Part 6B commencement day.~~

~~36ZR. Amount of insured compensation~~

- ~~(1) Subject to subsection (4), the compensation for an injury to a volunteer to be provided by an injury policy is to be of the amount and for the purposes that would apply under the WC&IM Act if the volunteer were a worker and suffered that injury and the WC&IM Act (with the appropriate changes) applies accordingly.~~
- ~~(2) Where, under the WC&IM Act, an amount of compensation to be provided by an injury policy depends on weekly earnings, references to weekly earnings are taken to be references to the greater of—
 - ~~(a) the benchmark weekly earnings; or~~
 - ~~(b) either—
 - ~~(i) if the volunteer is a self-employed or unemployed person, the actual weekly earnings received by the volunteer; or~~
 - ~~(ii) in any other case, the volunteer's weekly earnings calculated in accordance with the WC&IM Act.~~~~~~
- ~~(3) WC&IM Act Schedule 1 clauses 8, 10, 11, 16, 17, 18, 18A and 19 apply (with the appropriate changes) to an injury policy as if they were set out in the policy.~~
- ~~(4) The regulations may limit, with respect either to an individual volunteer or to volunteers generally, the amount of compensation for which a responsible agency is required by section 36ZQ(2) to insure.~~
- ~~(5) The regulations may limit, with respect either to a single claim or to claims generally, the amount of compensation for which a responsible agency is required by section 36ZQ(3) or (4) to insure.~~
- ~~(6) A responsible agency may effect insurance which provides a greater amount of compensation than is required under this section.~~

~~36ZS. Terms of insurance~~

- ~~(1) The terms of an injury policy must provide—
 - ~~(a) that claims under the policy are subject to the same time limitation periods as would apply under the WC&IM Act if the injured volunteer were a worker and had suffered a compensable injury; and~~~~

- ~~—(b)— that a volunteer insured or proposed to be insured under the policy may be required to provide medical certificates or to submit to medical examinations, occupational or vocational assessments and the like for the purposes of the policy.~~
- ~~—(2)— The regulations may —~~
 - ~~—(a)— limit, modify or exclude any requirement in this Division to obtain or keep current insurance in respect of liabilities arising in prescribed circumstances or out of prescribed events; and~~
 - ~~—(b)— otherwise limit, modify or exclude the requirement in this Division to obtain or keep current insurance.~~
- ~~—(3)— Subject to subsection (1), the regulations may prescribe any or all of the terms and conditions of insurance required by this Division.~~
- ~~—(4)— Subject to subsection (1), the regulations may prescribe the form of a policy providing insurance required by this Division.~~

Division 3 — Uninsured compensation

36ZT. — Uninsured compensation for specified diseases

- ~~—(1)— This section applies if —~~
 - ~~—(a)— a volunteer contracts a specified disease; and~~
 - ~~—(b)— the specified disease is taken to be an injury caused while engaged in volunteer activities; and~~
 - ~~—(c)— the date of injury is on or after 13 November 2013 but before the Part 6B commencement day.~~
- ~~—(2)— If this section applies, the volunteer is entitled to an amount of compensation equal to the amount that would be payable under an injury policy if the date of injury were on or after the Part 6B commencement day.~~

36ZU. — Additional compensation for specified injuries

- ~~—(1)— In this section —~~
 - ~~— *prescribed amount* has the meaning given in the WC&IM Act section 5(1);~~
 - ~~— *specified injury* means —~~
 - ~~—(a)— death; or~~
 - ~~—(b)— total loss of sight of both eyes; or~~
 - ~~—(c)— total loss of sight of an only eye; or~~
 - ~~—(d)— permanent and incurable loss of mental capacity resulting in total inability to work; or~~

- ~~— (e) — total and incurable paralysis of the limbs or of mental powers; or~~
- ~~— (f) — loss of both hands; or~~
- ~~— (g) — loss of a hand and foot; or~~
- ~~— (h) — loss of both feet; or~~
- ~~— (i) — severe facial scarring or disfigurement (including scarring or disfigurement as a result of burns); or~~
- ~~— (j) — severe bodily, other than facial, scarring or disfigurement (including scarring or disfigurement as a result of burns).~~
- ~~— (2) — A volunteer who has suffered a specified injury while engaged in volunteer activities on or after the Part 6B commencement day is entitled to a further amount, in addition to any amount payable under an injury policy, so that the total amount received by or in respect of that volunteer in relation to that injury is equal to the prescribed amount as at the date on which the injury was caused multiplied by 2.36.~~

~~**36ZV. — Source of compensation under this Division**~~

- ~~— A responsible agency is to pay compensation to which a volunteer is entitled under this Division out of moneys appropriated by Parliament for that purpose.~~

~~**Division 4 — General**~~

~~**36ZW. — Payment of compensation**~~

- ~~— (1) — Subject to subsection (2), an amount payable under an injury policy or under section 36ZT or 36ZU is payable to the person or persons who would be entitled under the WC&IM Act to receive it if the injured volunteer were a worker and had suffered a compensable injury, and the WC&IM Act (with the appropriate changes) applies accordingly.~~
- ~~— (2) — A spouse or de facto partner of the injured volunteer is to be taken for the purposes of this section to be wholly dependent on the injured volunteer's earnings.~~
- ~~— (3) — If an amount payable under an injury policy or under section 36ZT or 36ZU is payable to more than one person it is to be apportioned between those persons as the regulations provide.~~

~~**36ZX. — Specified disease disputes**~~

- ~~— (1) — In this section —
 - ~~— *specified disease dispute* means a dispute in connection with the application or operation of section 36ZN or 36ZT.~~~~

- ~~(2) The WC&IM Act Parts XI and XIII apply (with the appropriate changes) in relation to a specified disease dispute as if the specified disease dispute were a dispute as defined in the WC&IM Act section 176(1).~~
- ~~(3) Despite the WC&IM Act section 217B(1), for the purposes of an action for damages brought independently of this Act, a decision of an arbitrator in relation to a specified disease dispute is not final or binding on the parties to the dispute.~~